

302 CMR 19.00: SMALL WIRELESS FACILITY AND NEW SMALL CELL STRUCTURE LICENSING

Section

- 19.01: General Provisions
- 19.02: Definitions
- 19.03: Siting Requirements
- 19.04: Licensing Procedures
- 19.05: Severability

19.01: General Provisions

(1) Purpose. 302 CMR 19.00 sets forth the application requirements and procedures relative to small cell and small wireless facility licensing in public rights of way (ROW) under the jurisdiction, custody, or control of the Department of Conservation and Recreation in compliance with an Order of the Federal Communications Commission entitled *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, (FCC Order) which Order is effective January 14, 2019.

(2) Applicability of Other Regulations.

- (a) The installation of Small Wireless Facilities and Structures do not require a Construction and Access Permit pursuant to 302 CMR 11.00: *Parkways, Traffic, and Pedestrian Rules*.
- (b) If any provisions of 302 CMR 11.00: *Parkways, Traffic, and Pedestrian Rules* conflict with provisions of 302 CMR 19.00, the provisions of 302 CMR 19.00 shall prevail as applied to the installation of Small Wireless Facilities and Structures.
- (c) Fees listed in 801 CMR 4.02 “302 Department of Conservation and Recreation” for Construction and Access Permits do not apply to Small Wireless Facilities or Structures.
- (d) Fees associated with Small Wireless Facilities or Structures can be found in 801 CMR 4.02(14)(g) “302 Department of Conservation and Recreation”.

(3) Construction.

- (a) 302 CMR 19.00 shall be liberally construed to permit the Department of Conservation and Recreation to discharge its statutory functions.
- (b) The Commissioner of the Department of Conservation may, in the public interest, or in an emergency, suspend the application of any section of 302 CMR 19.00.
- (c) The Commissioner of the Department of Conservation and Recreation may waive any provision or requirement in 302 CMR 19.00 not specifically required by law when in the Commissioner's judgment strict compliance with such provision or requirement would result in an undue hardship and would not serve to further the intent of M.G.L. c. 21, § 1; M.G.L. c. 132A, § 7; M.G.L. c. 92, §§ 33, 34B, 35, 35A, 37, 38, 41 and 95A; and St. 2003, c. 41.
- (d) No provision of 302 CMR 19.00 shall make unlawful any act necessarily performed by any officer or employee of the Department of Conservation and Recreation performed in the line of duty or as part of his or her work duties, or by any person acting as an agent of the Department of Conservation and Recreation or its employees. This shall be true for any person or his or her agents engaged in performing the proper and necessary execution of the terms and conditions of any agreement with the Department of Conservation and Recreation.
- (e) In the event the FCC Order is enjoined, temporarily or permanently, or otherwise rendered ineffective or invalid by a court of competent jurisdiction, 302 CMR 19.00 may be suspended or rescinded in whole or in part.

19.02: Definitions

The following words and phrases, when used in 302 CMR 19.00, shall have the meanings respectively ascribed to them in 302 CMR 19.02, except in those instances where the context clearly indicates a different meaning or is otherwise stated. Whenever any words and phrases used in 302 CMR 19.00 are not defined in 302 CMR 19.02, such word or phrase shall be construed according to its generally accepted meaning as noted in a dictionary of general usage.

19.02: continued

Boulevard. Any Roadway, Parkway, Way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly-established curb lines or that part, including medians and landscaping, improved and intended to be open and used for vehicular traffic 24 hours a day by the public.

Commencement Date. The date upon which a Small Cell License is executed by both DCR and the Licensee.

Commissioner. The Commissioner of the Massachusetts Department of Conservation and Recreation (DCR) or his or her designee.

Critical Root Zone. The area that results by measuring outwards from the trunk of a tree 1.25 feet for every inch of trunk diameter, with the trunk diameter measured at 4.5 feet above the ground.

Cultural Landscape. A geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values.

DCR or the Department. The Massachusetts Department of Conservation and Recreation.

FCC. The Federal Communications Commission.

Form Small Cell License Agreement. A form license agreement with fixed, nonnegotiable terms to be executed by DCR and a Licensee.

Historic Plantings. Plants, flowers, trees, and shrubs that are part of a significant cultural landscape. Plantings may date back to an original landscape design or era, or they may be replacement plantings that reflect the original design or help to convey the historic character of a cultural landscape.

Historic Property. Properties contained on the Inventory of Historic and Archaeological Assets of the Commonwealth, and those listed on the *State Register of Historic Places*, as defined in 950 CMR 71.03: *Definitions*. The State Register contains all of the following:

- (1) All districts, sites, buildings, or objects determined eligible for listing in the *National Register of Historic Places*. These include properties listed in the National Register under provisions outlined in 36 CFR Part 60 or properties determined eligible for listing in the National Register under provisions outlined in 36 CFR Part 63.
- (2) All local historic districts established pursuant to M.G.L. c. 40C or special legislation.
- (3) All landmarks designated under local ordinances or bylaws.
- (4) All structures and sites subject to preservation restrictions approved of and held by the Massachusetts Historical Commission pursuant to M.G.L. c. 184, § 32.
- (5) All historical or archaeological landmarks certified pursuant to M.G.L. c. 9, § 27.
- (6) All properties listed by the Massachusetts Historical Commission pursuant to M.G.L. c. 9, § 26D.

License. A Form Small Cell License Agreement issued by DCR pursuant to its statutory authority and 302 CMR 19.00, and fully executed by DCR and the Licensee.

License Application. The application provided by DCR to parties seeking a Small Cell License.

Licensee. The party named in a valid Small Cell License issued by DCR pursuant to its statutory authority and 302 CMR 19.00.

Location. The physical space and the space appurtenant thereto which serve as the site of a single installation of Small Cell equipment or a single Small Cell Structure.

19.02: continued

Massachusetts Historical Commission or MHC. State commission formed under M.G.L. c. 9, § 26.

Parkway. Any Boulevard, Roadway, Way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly-established curb lines or that part, including medians and landscaping, improved and intended to be open and used for vehicular traffic 24 hours a day by the public.

Person. Any individual, corporation, firm, partnership, company, association, trust, or other business or nonprofit organization; any agency, department, board, commission, quasi-public agency or authority of the Commonwealth; and any Federal, municipal, or regional governmental or intergovernmental agency, department, board, commission, authority, or other entity, or any combination of individuals or entities including, but not limited to, those listed above, their agent, trustee, executor, receiver, assignee, or other representative thereof.

Right of Way or ROW. The area within the jurisdiction and control of DCR which:

- (a) DCR has designated as appropriate for utility easements, but in no event greater than ten feet from the outer edge of a Roadway; or
- (b) is a Roadway, and including, specifically, the area between the inner edges of any adjacent paved sidewalks paralleling said Roadway or, where there is no paved sidewalk, the land paralleling said Roadway in which, in DCR's reasonable determination, a Small Wireless Facility or Small Cell Structure may be located without violating applicable health and safety codes, and in conformance with generally accepted Roadway design and safety standards (including, without limitation, the Manual of Uniform Traffic Control Devices and amendments adopted by the Massachusetts Department of Transportation, the *Highway Safety Manual* published by the AASHTO, and/or DCR Historic Parkway Preservation Treatment Guidelines), but in no event greater than ten feet from the outer edge of the Roadway.

Roadway. Any Boulevard, Parkway, Way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly-established curb lines or that part, including medians and landscaping, improved and intended to be open and used for vehicular traffic 24 hours a day by the public.

Shot Clock. A timing mechanism that is used pursuant to the FCC Order for DCR review of License Applications.

Small Cell. See definition for Small Wireless Facility.

Small Cell Facility. See definition for Small Wireless Facility.

Small Wireless Facility. Facilities that meet the following conditions:

- (a) The facilities:
 - 1. are mounted on structures 50 feet or less in height (including the antenna);
 - 2. are mounted on structures no more than 10% taller than other adjacent structures; or
 - 3. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater.
- (b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than 28 cubic feet in volume;
- (d) The facilities do not require antenna structure registration under 47 CFR Part 17.
- (e) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (f) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

19.02: continued

Structure. A pole, tower, building, bridge or other structure to which a Small Cell can be attached in compliance with 302 CMR 19.00 and all other applicable health and safety codes and design and safety standards applicable to a Roadway or a Right of Way.

Way. Any public highway, private way laid out under authority of statute, dedicated to public use, or a Roadway under the jurisdiction and control of DCR and defined in 302 CMR 19.02: Boulevard, Parkway or Roadway.

19.03: Siting Requirements

302 CMR 19.03 addresses safety, operational, and aesthetic requirements for DCR Rights of Way.

(1) A Small Wireless Facility or Structure is not permitted where it will block or restrict access to the Right of Way for DCR maintenance equipment, pedestrians, wheelchairs, Other Powered-driven Mobility Devices, bicycles, and other users. Siting shall comply with the requirements and regulations of the Americans with Disabilities Act (ADA) and the Architectural Access Board (AAB).

(2) A Small Wireless Facility or Structure is not permitted where it may block or limit sight lines, such that it may affect safety on DCR's Rights of Way.

(3) On Rights of Way with curbs, new Structures must be set 12 inches from the face of the curb.

(4) When a new Structure is proposed to be placed in an area that is not paved, the Structure must be placed on a concrete pad approved by DCR.

(5) A Small Wireless Facility or Structure is not permitted in a Location where, in DCR's reasonable judgment, it will hinder routine maintenance of DCR Rights of Way including, without limitation, vegetation mowing or trimming, and snow/ice clearing.

(6) A Small Cell Wireless Facility or Structure must leave clearance of at least 48 inches on any sidewalk.

(7) Unless an existing wood pole is being proposed for use, wiring and utility connections must be installed on the inside of a pole. On an existing wood pole, wiring and utility connections must be installed in a conduit. In no case may wiring be exposed. If conduit already exists on a wood pole, any new conduit must match the color of the existing conduit. A new conduit must be sized to the smallest dimensions feasible and designed to match the host structure.

(8) Antennae, cabinets, conduit, and other associated equipment mounted on existing Structures must be painted or colored to match the existing Structure, in order to minimize visibility.

(9) Where existing Structures (such as light poles or utility poles) cannot be used for mounting new equipment, replacement Structures should match such nearby existing Structures in location, design, color, texture, finish, and, where possible, materials.

(10) Antennae, cabinets, conduit, and other associated equipment mounted on existing Structures at multiple locations in or along Historic Property or Roadways should feature similar design and positions for a consistent appearance. Applicant bears the burden of demonstrating that compliance with 302 CMR 19.03(10) is not technically feasible, in which case DCR may, in its sole discretion, consider alternative proposals submitted by the applicant.

(11) If DCR's "1907 Boulevard" style light poles are used for Small Cells, the height of the pole with the Small Cells shall not exceed 31 feet, and any attachments to such poles must not be out of proportion to the pole.

19.03: continued

(12) Other than proposed new Structures that are similar in size, shape and appearance to existing Structures used for telecommunications or utility purposes in the same location or proposed attachments to be placed on an existing Structure which already hosts telecommunication or utility equipment of similar size, shape, and appearance, Small Cell equipment is not permitted within 20 feet of the front or side of a Historic Property that is not a Roadway.

(13) Small Cell equipment shall not interfere with Historic Plantings, especially mature trees. Removal of trees and shrubs is prohibited.

(14) New Structures shall not be placed within the Critical Root Zone of DCR trees, or at least six feet from DCR trees (measured in a circle from the tree trunk), whichever is greater.

(15) Any new Structures must be at least 150 feet from each other or from other existing structures, regardless of carrier or applicant and inclusive of all types of installations, whether Small Cell or other. DCR may approve spacing of a shorter distance based on local conditions, such as preexisting Structures that are closer than 150 feet apart.

(16) Repairs and restoration of Historic Properties disturbed by the installation of a Small Cell shall follow the guidelines in the Secretary of the Interior's Standard for the Treatment of Historic Properties, and be conducted by the Licensee its sole cost and expense.

(17) Repairs and restoration of DCR parkways, roadways, and boulevards shall follow DCR's Historic Parkway Preservation Treatment Guidelines and specifications provided by DCR, and shall be conducted by the Licensee at its sole cost and expense.

(18) Lighting. When installing lights, Licensee shall comply with the following requirements:

(a) All work to replace damaged or deteriorated shafts of existing DCR street lights or light poles must be performed in accordance with the Light Pole Specifications set forth as an attachment to the License.

(b) Licensee shall conduct and provide a photometric survey to ensure ample and even light flow;

(c) Licensee shall use LED light elements or bulbs;

(d) For any new Structure that replaces a light pole with an existing shield, the new Structure must have a comparable shield in accordance with the specifications attached to the License.

(e) For any installation of a Small Cell on an existing light pole with an existing shield, the shield must be left intact or a comparable shield must be installed in accordance with the specifications attached to the License.

(f) Licensee shall comply with any other DCR specifications to be attached to the License.

(19) The Small Cell owner's name shall appear on every Small Cell or Small Cell Structure, if applicable, in a font size of between ½ and one inch in height, for location identification purposes. No advertising will be permitted on any Small Wireless Facility or Structure.

(20) If a base cabinet is greater than 12 cubic feet in size, the base cabinet must be placed in an underground vault. Applicant bears the burden of demonstrating that compliance with 302 CMR 19.03(20) is not technically feasible, in which case DCR may, in its sole discretion, consider alternative proposals submitted by the applicant.

(21) Small Cell and related equipment which would increase the weight or change the calibration or configuration of a structure which contains traffic signals and, in DCR's sole judgment, would thereby interfere with the structural integrity or proper functioning of the structure or traffic signals or which would otherwise create a safety risk for the traveling public, cannot be installed on existing structures which contain traffic signals.

(22) Licensee shall not occupy or restrict any lane of travel on a Roadway at the following times:

9.03: continued

- (a) During a weather or DCR-declared emergency;
- (b) During the hours 5:30 AM through 9:30 AM and 3:00 P.M. through 7:00 P.M. on weekdays which are not holidays; or
- (c) When the Roadway is closed.

19.04: Licensing Procedures

(1) General.

- (a) A party seeking to submit a License Application may access a DCR Right of Way prior to such submission solely for the purpose of obtaining the documentation necessary to request locations for Small Cell(s) or new Structure(s) or to assess the suitability of the structure(s) for proposed Small Cells.
- (b) License Applicant must consult with the Massachusetts Historical Commission for any project that may adversely affect properties listed on the State Register of Historic Places. Consultation is described in 950 CMR 71.00: *Protection of Properties Included in the State Register of Historic Places.*
- (c) License Applicant must consult with the Massachusetts Division of Fisheries and Wildlife - Natural Heritage and Endangered Species Program (NHESP) for any project that may impact Priority or Estimated Habitat for Rare Species listed in 321 CMR 10.00: *Massachusetts Endangered Species Act Regulations.*
- (d) License Applicant is solely responsible for ascertaining whether any other certificates, licenses, permits or approvals will be required from other local, state, or federal authorities or entities including, but not limited to, the following: Commonwealth Architectural Access Board; Federal Communications Commission; Massachusetts Water Resources Authority; local Wire permitting authorities; Massachusetts Department of Public Safety (Building Code enforcement); Massachusetts Department of Environmental Protection; local Conservation Commissions; local landmark or historical commissions; United States Army Corps of Engineers; Massachusetts Division of Capital Asset Management and Maintenance; Massachusetts Department of Transportation (MassDOT); Federal Highway Administration. License Applicant is encouraged to consult MassDOT's website for useful "Design Guides and Manuals" (<https://www.mass.gov/lists/design-guides-and-manuals>).

(2) Application Requirements.

- (a) All parts of a Small Cell License Application must be completed, and all required application fees, plans, studies, photographs, drawings, and other details must be included with an Application in order for it to be deemed complete.
- (b) DCR shall require that the engineering plans and specifications provide for safe and efficient access which protects the operational integrity of the DCR property. Plan review and approval shall be based on generally accepted Roadway design and safety standards (including, without limitation, the most recent Manual on Uniform Traffic Control Devices (MUTCD) and amendments adopted by the Massachusetts Department of Transportation, the *Highway Safety Manual* published by AASHTO, and/or DCR Historic Parkway Preservation Treatment Guidelines).
- (c) Licensee is responsible for Subsurface Utility Engineering reviews and clearance with other entities.
- (d) Where applicable, a Dig Safe will be required prior to the start of any construction.
- (e) Licensee must provide complete information as to the current conditions in the subject Right of Way.
- (f) Licensee must provide complete information as to the current conditions on the existing Structure, if applicable, including, without limitation, the existence of existing conduits or the need for new conduits.
- (g) Licensee must provide a structural analysis of a new or existing Structure, which uses accurate geographic, ground conditions, and elevation information for all calculations. Such structural analysis must include not only the applicant's proposed equipment, but all other equipment currently existing on the structure. Detailed information about all proposed equipment must be provided to DCR including, without limitation, schematics, power sourcing, finish, color, *etc.* The final structural analysis and any related plans must be stamped by an engineer qualified and currently registered for such work and must be provided to DCR for review.

19.04: continued

- (h) Licensee must provide a Traffic Management Plan stamped by a licensed professional engineer.
 - (i) Licensee must provide a restoration plan including, but not limited to, details as to compliance with requirements and regulations of the Americans with Disabilities Act (ADA) and the Architectural Access Board (AAB). Any sidewalk that is not ADA compliant prior to installation under a License must be made ADA compliant if the Licensee seeks to install a new pole or conduit.
- (3) Application Processing.
- (a) Applications are reviewed on a first come, first served basis.
 - (b) Applications will be date and time stamped upon receipt by DCR.
 - (c) A single application may seek authorization for multiple installments of Small Wireless Facilities and/or Structures only if all of the Locations of such installations will be located in the same Right of Way.
 - (d) An application, whether for multiple installations or a single installation, will be approved or denied in whole.
 - (e) Time for processing applications.
 1. DCR will review applications proposing to install Small Wireless Facilities only on an existing Structure(s) within a DCR Right of Way 60 calendar days, except as follows:
 - a. If, within ten business days from the date of receipt of an application, DCR determines that the application is incomplete and notifies the applicant of such deficiencies with sufficient specificity, the Shot Clock resets once the License Applicant submits the supplemental information requested by DCR.
 - b. If the License Applicant submits the supplemental information requested by DCR, DCR shall have ten business days to review the supplemental information and to notify the License Applicant of any deficiencies therein with sufficient specificity. Such notification will toll the Shot Clock pending receipt by DCR of additional supplemental information. Submitted supplemental information shall be subject to the ten-day review and tolling process set forth in 302 CMR 19.04(3)(e)1.b.
 2. DCR will review applications proposing to install a new Small Cell Structure(s) within a DCR Right of Way within 90 calendar days, except as follows:
 - a. If, within ten business days from the date of receipt of an application, DCR determines that the application is incomplete and notifies the applicant of such deficiencies with sufficient specificity, the Shot Clock resets once the License Applicant submits the supplemental information requested by DCR.
 - b. If the License Applicant submits the supplemental information requested by DCR, DCR shall have ten business days to review the supplemental information and to notify the License Applicant of any deficiencies therein with sufficient specificity. Such notification will toll the Shot Clock pending receipt by DCR of additional supplemental information. Submitted supplemental information shall be subject to the ten-day review and tolling process set forth in 302 CMR 19.04(3)(e)2.b.
 3. DCR will review applications proposing to install both new Small Cell Structures and Small Wireless Facilities within a DCR Right of Way within 90 calendar days, except as follows:
 - a. If, within ten business days from the date of receipt of an application, DCR determines that the application is incomplete and notifies the applicant of such deficiencies with sufficient specificity, the Shot Clock resets once the License Applicant submits the supplemental information requested by DCR.
 - b. If the License Applicant submits the supplemental information requested by DCR, DCR shall have ten business days to review the supplemental information and to notify the License Applicant of any deficiencies therein with sufficient specificity. Such notification will toll the Shot Clock pending receipt by DCR of additional supplemental information. Submitted supplemental information shall be subject to the ten-day review and tolling process set forth in 302 CMR 19.04(3)(e)3.
 - (f) The Shot Clock begins to run on the first business day after receipt of a License Application by DCR.
 - (g) DCR is under no obligation to review applications that it has deemed incomplete.

19.04: continued

- (4) Small Cell License Provisions. Licenses issued under 302 CMR 19.00 shall include provisions substantially similar to the following:
- (a) A License is fully revocable by DCR and may be terminated by DCR at any time and for any reason upon written notice to the Licensee.
 - (b) No License will have a term greater than ten years.
 - (c) All License terms are fixed and nonnegotiable.
 - (d) A Licensee must comply with any and all terms and conditions contained within a License. Any act authorized pursuant to a License may be performed only by the person(s) named in the approved license application which is attached to the License, and any such authorizations may not be assigned or delegated, except as provided by such License; provided that a Licensee may change the installer of equipment or a Structure upon written notice to DCR; provided also that a Licensee may utilize contractors to maintain, repair, and/or replace equipment or a Structure authorized by the License, if any such contractors are identified to DCR and consented to in writing by DCR.
 - (e) Licensee must comply, at the Licensee's exclusive expense, with all applicable federal, state and local statutes, laws, ordinances, rules, regulations and policies.
 - (f) A Licensee is solely and exclusively responsible for any applicable taxes.
 - (g) A License does not confer on the Licensee any rights or interests in real property. Licensee shall not record the License in the Registry of Deeds or register the License in the Land Registration Office of the Land Court.
 - (h) A Licensee shall not use or occupy DCR property for which a fee or other charge has been established unless the Licensee has first paid such fee or charge, unless otherwise authorized.
 - (i) Licensee may not assign, give, delegate, sublicense, transfer, encumber, or otherwise dispose of the rights and duties contained in a License to any other entity or person. However, Licensee may assign, sublicense, or transfer the rights and duties contained in a License to an affiliate, subsidiary, or successor of Licensee upon prior written notice to DCR. If a Licensee is required by regulating authorities to assign the License, Licensee shall provide prior written notice to DCR. Licensee may assign, sublicense, or transfer the rights and duties contained in a License to an unaffiliated person only after receiving written permission for such assignment, sublicense, or transfer from DCR. Except as set forth in 302 CMR 19.04(4)(i), DCR shall not be obligated to recognize any right of any entity or person to any interest in the License or to any rights, equipment, structures, or property of the Licensee at the Location(s) as granted by the License.
 - (j) If a Licensee is acquired, Licensee shall promptly provide written notice to DCR.
 - (k) Licensee agrees to install Small Cells, Small Cell Structures, and any related equipment for which it receives a License at the Location(s) and in the manner specified in the License.
 - (l) If Licensee does not commence the installation(s) authorized by a License at any approved Location within six months of the date on which the License was signed by DCR, the approval for such installation at any such Location shall be revoked. If Licensee timely commences an installation authorized by the License, but does not complete any such installation within 12 months of the date on which the License was signed by DCR, the approval for such installation at such Location shall be revoked, and the Licensee must promptly remove all of its equipment from such Location. In the event approval for any Location is revoked in accordance with 302 CMR 19.04(4)(l), Licensee may not submit a new Small Cell application to reapply for a License for that Location within six months from the date of revocation or from the date the equipment is fully removed by the Licensee, whichever is later. If Licensee does not remove its equipment within 30 calendar days after being requested to do so in writing by DCR, DCR may remove and dispose of the equipment without incurring any liability to Licensee. Licensee will not be eligible for any other Licenses or permits from DCR until restitution is made for the necessary and reasonable costs actually incurred by DCR for such removal and disposal. Such costs shall include, but not be limited to, DCR staff time.
 - (m) Licensee agrees not to make any change, addition, reconfiguration, or replacement of a Small Cell or, if applicable, a Small Cell Structure or related equipment in any way that increases the size, weight or wind load of the Small Cell, Structure, or equipment, or which does not otherwise comply with the provisions of 302 CMR 19.00, without the prior written approval of DCR.

19.04: continued

(n) If a Licensee is found to have any equipment on the Location(s) which was not included in a duly issued License, other than equipment installed pursuant to 302 CMR 19.04(4)(m), upon written notice from DCR, the Licensee shall take immediate action to discontinue the non-permitted use and remove any and all equipment associated with such non-permitted use. Failure to remove such equipment and end the use thereof will be deemed a material breach of the License, and the approval for such Location will automatically and immediately be revoked.

Upon such revocation, Licensee shall promptly remove its equipment from the subject Location. In the event of such revocation, Licensee may not submit a new Small Cell application to reapply for a License for the same Location(s) within six months from the date of revocation or from the date the equipment is fully removed by Licensee, whichever is later. If Licensee does not remove its equipment within 30 calendar days after being requested to do so in writing by DCR, DCR may remove and dispose of the equipment without incurring any liability to Licensee. Licensee will not be eligible for any other Licenses or permits from DCR until restitution is made for the necessary and reasonable costs actually incurred by DCR for such removal and disposal. Such costs shall include, but not be limited to, DCR staff time.

(o) A Licensee is responsible, at its sole cost and expense, for maintaining and repairing its Small Wireless Facilities, Structures, and related equipment.

(p) A License issued by DCR is conditioned upon the Licensee having obtained, for each Location, all certificates, permits, licenses, and other approvals that may be required by any other federal, state, and local authority, or any other entity including, but not limited to, other owners of Structures within the ROW, prior to the commencement of any installation, including DCR-approved change, addition, reconfiguration, or replacement, of a Small Cell, or, if applicable, a Structure, or related equipment. If any application for such certificates, permits, licenses, or other approvals including, but not limited to, zoning approval, is rejected, withdrawn, expires, lapses, or is terminated by any governmental authority or by the owner of a Structure upon which the Licensee seeks to attach a Small Cell, Licensee shall immediately notify DCR in writing. Upon such notification, or upon DCR's independent confirmation of the loss of any certificates, permits, licenses, or other approvals, and DCR's notification to the Licensee thereof, DCR's approval for such Location(s) shall be immediately and automatically revoked, and Licensee shall promptly remove its equipment from such Location(s). In the event approval for any Location is revoked in accordance with 302 CMR 19.04(4)(p), Licensee may not submit a new Small Cell application to reapply for a License for that Location within six months from the date of revocation or from the date the equipment is fully removed by Licensee, whichever is later. If Licensee does not remove its equipment within 30 calendar days after being requested to do so in writing by DCR, DCR may remove and dispose of the equipment without incurring any liability to Licensee. Licensee will not be eligible for any other Licenses or permits from DCR until restitution is made for the necessary and reasonable costs actually incurred by DCR for such removal and disposal. Such costs shall include, but not be limited to, DCR staff time.

(q) Licensee agrees to notify DCR staff listed in the License when accessing the Location(s) to conduct either routine or non-routine work (*i.e.*, work involving large trucks, cranes, excavation of any kind, major building, tower repairs or additions) by the Licensee, its consultants, agents, or contractors at or on the Location(s) no less than ten business days in advance. Licensee shall comply with any other reasonable notification arrangements set by DCR staff. Licensee agrees that neither it nor its consultants, agents, or contractors has authorization to use other structures or equipment not identified in the License that may be located on nearby DCR property. In the event of an emergency affecting Licensee's Small Cell, Structure, or related equipment, Licensee and its consultants, agents, and contractors may access the Location(s) and perform necessary repairs to its equipment and to the Structure, including removal of a damaged Structure, with prior notice to DCR. Licensee shall seek any required approval of permits as soon as practicable in the circumstances. All emergency work shall be conducted in a safe and good workmanlike manner and in accordance with all applicable codes, regulations, and laws.

19.04: continued

- (r) To the extent that a Licensee's use of DCR property is authorized by DCR through issuance of a License, the Licensee may have the right to utilize any existing DCR Rights of Way, access licenses, or easements to gain access to the Location(s) for the limited purpose of performing installation, maintenance and repairs to the Licensee's authorized equipment. A Licensee will not be authorized to make improvements on the land under or leading to the Location(s) without the prior written approval of DCR, which DCR may grant or withhold at its sole discretion. Closure of a Roadway for installation, maintenance or repairs to a Licensee's authorized equipment requires written permission from DCR, which permission will not be granted during the hours noted in 302 CMR 19.03(22)(b).
- (s) Licensee shall pay restitution to DCR for the amount of reasonable and necessary costs actually incurred by DCR for maintenance and repairs which arise solely from work described in 302 CMR 19.04(4)(o).
- (t) Licensee shall not make any claims against DCR for loss of electrical power or other utilities due to damaged power lines or poles regardless of the length of time of the outage as such losses generally are beyond the authority and scope of DCR to rectify. Licensee shall not obstruct or interfere with electrical service to DCR or any permitted user's equipment.
- (u) Licensee agrees to arrange for the installation and payment of a separate electrical meter for all of its electricity consumed on the Location(s) and to pay all such electricity and utility bills directly to the provider. Upon request of DCR, Licensee shall provide proof of arrangements and payment. Licensee shall provide DCR (Engineering Department) with a copy of any new electrical service application documents, utility company plans, and notice of the proposed installation schedule.
- (v) Provided that Licensee is not in default of any obligations under a Small Cell License and has paid all fees and sums due and payable to DCR, Licensee may terminate its License upon at least 60 days prior written notice to DCR.
- (w) Without waiving any other rights granted at law or in equity, DCR shall have the right, but not the obligation, to terminate a License if the Licensee fails or has failed to perform any covenant or commits a material breach of 302 CMR 19.00 or the License provisions and fails or has failed to diligently pursue a cure thereof to its completion within 30 days after written notice from DCR specifying such failure of performance or default. In the event of the loss of any certificate, permit, license or other approval that may be required for the authorized use of any Location by the Licensee, the approval for such Location shall be automatically and immediately revoked, and Licensee shall promptly remove its equipment from such Location in accordance with 302 CMR 19.04(4)(y).
- (x) Removal Upon Termination. Within 60 calendar days after the termination or expiration of a License, Licensee, at its sole cost and expense, shall remove all Small Cells and related equipment which the Licensee installed. Such removal must occur without damage to property of the Commonwealth, DCR, other licensees or permittees, or any other party. If, after said 60-day period has elapsed, Licensee has not fully removed its equipment, DCR may remove and dispose of the equipment without incurring any liability to the Licensee. Licensee will not be eligible for any other Licenses or permits from DCR until restitution is made for the necessary and reasonable costs actually incurred by DCR. Such reasonable and necessary costs may include, but not be limited to, DCR staff time.
- (y) Any Structure remaining on the Location(s) shall be deemed a fixture and shall become the property of DCR unless Licensee is directed by DCR in writing to remove said Structure. If a Licensee does not remove its Structure within 60 days after DCR's request to do so, DCR may remove and dispose of the Structure without incurring any liability to the Licensee. Licensee will not be eligible for any other Licenses or permits from DCR until restitution is made for the necessary and reasonable costs actually incurred by DCR. Such reasonable and necessary costs may include, but not be limited to, DCR staff time.
- (z) The terms of the License are not to be construed as authorizing exclusive use of the Location(s). DCR may permit, license, rent, provide access to, or otherwise assign all or a portion of the Location(s) at its sole discretion, to other authorized licensees or permittees. However, DCR agrees not to allow any other licensee or permittee to interfere with the uses authorized under the license.
- (aa) DCR may limit public access to the Location when a License has been duly issued for use of the Location.

19.04: continued

(bb) Licensee shall not obstruct or interfere with DCR or any other licensee or permittee, including, but not limited to, obstruction or interference with equipment or with the transmission or reception of radio signals, frequency, or use of power. Immediately upon receiving notice from DCR that a Licensee's activities are causing any such obstruction or interference, Licensee agrees to take appropriate action to eliminate the obstruction or interference. If said obstruction or interference cannot be eliminated within ten business days, Licensee agrees to discontinue use of the equipment which is creating the obstruction or interference.

(cc) Indemnification.

1. Licensee must agree, in writing, to indemnify, defend and hold the Commonwealth, including DCR and its employees, officers, and agents, harmless against all claims relating to or arising out of the use of DCR property and from any claims for personal injury or death or damage to personal property, of whatever kind or nature, arising from the Licensee's activities in the Location(s), including, but not limited to, claims arising from the release or threat of release of oil or hazardous materials, substances or wastes, or assessing, containing, removing, or disposing of the same, in or from the Location(s) or in connection with the Licensee's activities or operation of the Location(s), except to the extent such claims were caused solely by DCR's gross negligence or willful misconduct; claims arising from the intentional, willful, wanton or reckless, negligent, or careless acts or omissions of the Licensee, or by its contractors, agents, representatives, employees, permittees, licensees, guests, and invitees; and claims arising from the Licensee's failure to provide adequate safety or security in the Location(s), except to the extent such claims were caused solely by DCR's gross negligence or willful misconduct. DCR may also require the Licensee to obtain liability insurance with limits of coverage sufficient to support the Licensee's obligation to indemnify and hold the Commonwealth and DCR harmless.

2. The Licensee shall agree in writing not to make any claims against the Commonwealth, including DCR, in connection with or arising out of the use of the Location(s) for any injury, loss, or damage to persons, including, but not limited to, bodily injury or death, or damage to property arising out of or in connection with the actions or omissions of any third parties or DCR, or their contractors, agents, representatives, employees, permittees, licensees, guests and invitees, or any claims arising from or in connection with the release or threat of release of oil or hazardous materials, including, without limitation, any claims, including for costs or contribution, in connection with response actions or assessing, containing, removing, or disposing of oil or hazardous materials, substances or wastes, except to the extent such claims were caused solely by DCR's gross negligence or willful misconduct.

3. Neither DCR nor the Commonwealth shall be responsible for the Licensee's property, or the property of the Licensee's contractors, agents, representatives, employees, permittees, licensees, guests, or invitees.

4. Licensee shall waive any and all claims for compensation for any and all loss or damage sustained by reason of any interference by any public agency or official in the operation of its License.

5. These indemnification provisions are independent of and shall not in any way be limited by the insurance requirements contained in the License. DCR's approval of insurance contracts required under a License does not in any way relieve a Licensee from liability. The obligations of a Licensee under the "Indemnification" section of a License shall survive the expiration or termination of a License.

(dd) Insurance.

1. Licensee shall carry insurance in the minimum amounts and of the types described in the License, including, but not limited to, commercial general or public liability insurance, insurance for Commonwealth property (*i.e.*, any Commonwealth-owned Structures, Small Cell, related equipment, or other property at, on, or within Location(s)), fire and casualty insurance, and workers' compensation.

19.04: continued

2. Licensee must purchase a notice endorsement on all insurance policies such that DCR is provided no less than 30 days prior notice of cancellation for non-payment reasons and no less than ten days prior notice for payment reasons. Licensee shall also obtain an endorsement for the Location(s) explicitly naming "Commonwealth of Massachusetts, Department of Conservation and Recreation" as an additional insured on all applicable policies. Such endorsements shall be evidence on any certificates of insurance provided to DCR and may be submitted by e-mail.

3. Licensee must furnish Certificates of Insurance and proof of the required endorsements issued by an insurer or insurers qualified to do business in the Commonwealth (per the Massachusetts Division of Insurance, *see* <https://www.mass.gov/lists/massachusetts-licensed-insurance>) with a A.M. Best rating of no less than A, Class VI or higher or an equivalent Standard & Poor's Rating of AA+/- or higher to the following DCR office along with its License Application and updated annually each year of the License term and any extended periods:

Commonwealth of Massachusetts

Department of Conservation and Recreation

Attn: Engineering Department - Sean Casey

Re: License No. _____

251 Causeway Street, Suite 600

Boston, Massachusetts 02114

Fax: 617-626-1351 or 1301; e-mail: dcrSmallCell@mass.gov

4. Failure to maintain insurance throughout the term and any extension periods of a License shall be deemed a material breach of the License.

(ee) Licensee agrees not to do anything to cause DCR to be in violation of any federal, state, or local laws, rules, regulations, ordinances, orders and policies.

(ff) If, at any time during the term of a License, the Location(s) is damaged or destroyed by fire or other incident of any kind or nature whether ordinary or extraordinary, foreseen or unforeseen, DCR shall not be obligated to repair or reconstruct said Location(s) and, at the option of DCR or Licensee, the License may be terminated with 30 days prior written notice to the other.

(gg) Any actions arising out of a License shall be governed by the laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

(hh) If any part of a License is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of the License, and the remaining parts of the License shall be enforced as if such invalid, illegal, or unenforceable part were not contained therein.

(ii) The Licensee shall, in writing, assume all risk in connection with any and all activities engaged in by Licensee, its contractors, agents, representatives, employees, permittees, licensees, guests, and invitees at the Location(s) and shall be solely responsible and answerable in damages, and any other equitable remedies, for all accidents or injuries to all persons or property caused by the activities of the Licensee, its contractors, agents, representatives, employees, permittees, licensees, guests, and invitees at the Location(s).

(jj) Should it become necessary to enforce the terms of a License in an administrative proceeding or in a court of competent jurisdiction, the Licensee shall pay all reasonable attorney's fees.

19.05: Severability

If any section, subsection, division or subdivision of 302 CMR 19.00 shall be determined to be invalid, such determination shall apply to the particular section, subsection, division or subdivision, and all other provisions of 302 CMR 19.00 shall remain valid and in effect.

REGULATORY AUTHORITY

302 CMR 19.00: M.G.L. c. 92, §§ 33 and 37; M.G.L. c. 132A, §§ 2D and 7; St. 2003, c. 41; and St. 2011, c. 68, § 29.