

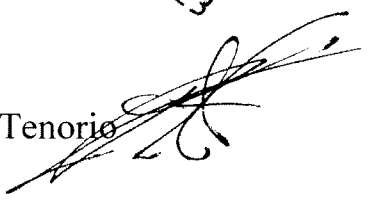
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I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 311(EC)

Introduced by:

Ray Tenorio 

**AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 66 OF
21GCA RELATIVE TO COLLOCATION AND WIRELESS
TOWER SITING.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2

3 **Section 1.** A new Article 8 is hereby *added* to Chapter 66 of 21GCA to
4 read:

5

6

Article 8

7

Collocation and Wireless Tower Siting

8

On Government of Guam Property, Buildings and Other Structures

9

10 **§66800. Legislative Intent:** *I Liheslaturan Guåhan* finds that the advancement of
11 Guam's socio-economic potential is largely dependent on our community's ability
12 to deploy a modern Information Technology (IT) data network that includes both
13 wired and wireless communications. IT deployment requires a commitment from
14 both governmental and private concerns to ensure that the resulting data services
15 are accessible and affordable. Guam's ability to provide and utilize reliable IT is
16 significantly important to (1) competing with emerging economies in the Pacific
17 Rim for tourism markets, (2) supporting growth within our existing businesses and
18 (3) attracting new economic opportunities.

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It is the intent of *I Liheslatura* to enact laws for the purpose of: ensuring (1) the safe and efficient integration of facilities necessary for the provision of advanced wireless communications services throughout the community and (2) the ready availability of reliable wireless service to the public and government agencies and first responders, with the intention of furthering the public safety and general welfare.

§66801: Definitions: For the purposes of these regulations, the following definitions shall apply:

Authority: A utility, department, agency, public corporation, branch or instrumentality of the Government of Guam that has adopted planning and zoning regulations for all or the majority of land uses within the jurisdiction.

Antenna: Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Building Permit: An official administrative authorization issued by an authority prior to beginning construction of any new or existing support structure. The issuance of a building permit is not a mechanism for the approval or denial of a zoning or land use application.

Collocation: The placement or installation of wireless facilities, on existing structures, including towers, buildings, utility poles, and water tanks in a manner

1 that negates the need to construct a new free standing support structure such as a
2 tower.

3

4 **Equipment Enclosure:** An enclosed structure, cabinet, or shelter used to contain
5 radio or other equipment necessary for the transmission or reception of wireless
6 communication signals.

7

8 **Existing Tower:** A free standing support structure constructed prior to the
9 enactment of this statute that is used to provide wireless services.

10

11 **Wireless Support Structure:** Other than a utility pole, a freestanding structure,
12 such as a monopole or tower, designed to support wireless facilities.

13

14 **Utility pole:** A structure owned and/or operated by a public utility that is designed
15 specifically for and used to carry lines, cables, or wires for telephony, cable
16 television, or electricity or to provide lighting.

17

18 **Application:** A formal request submitted to an authority to construct or modify a
19 Wireless Support Structure or a wireless facility.

20

21 **Wireless Facility:** The set of equipment and network components, exclusive of the
22 underlying support structure or tower, including, but not limited to, antennas,
23 transmitters, receivers base stations, power supplies cabling and associated
24 equipment necessary to provide wireless services to a discrete geographic area.

25

1 **§66802: Construction of New Wireless Facilities and Wireless Support**
2 **Structures.**

3
4 (1) An authority, as defined, may plan for and regulate the siting of Wireless
5 Facilities and Wireless Support Structures in accordance with adopted
6 planning or zoning regulations and in conformity with this title.

7
8 (2) Any person that is engaged in the business of providing wireless
9 telecommunications services or the wireless telecommunications
10 infrastructure required therefore, and that proposes to construct a Wireless
11 Support Structure within the jurisdiction of any planning authority that has
12 adopted planning and zoning regulations in accordance with this title shall:

13 (a) Submit the necessary copies and attachments of the applicant’s
14 completed application to the appropriate planning authority to
15 construct a Wireless Support Structure.

16 (b) Comply with any Guam Laws concerning land use and the
17 appropriate permitting processes, subject to the limitations imposed
18 by this chapter.

19
20 (3) All records (documents, electronic data, etc.) in the possession or custody
21 of authority personnel are subject to the Freedom of Information Act.
22 Disclosure of such records should be consistent with Public Law.

23
24 (4) After an applicant’s submission of a completed application to construct a
25 Wireless Support Structure, the authority shall, within twenty (20) days
26 commencing from the date that the application is deemed complete by the

1 authority or within a date certain specified in a written agreement between
2 the authority and the applicant:

3 (a) Review the completed application in light of its agreement with
4 the comprehensive plan and locally adopted zoning regulations;

5 (b) Make its final decision to approve or disapprove the application;
6 and

7 (c) Advise the applicant in writing of its final decision.
8

9 (5)A party aggrieved by the final action of an authority denying an
10 application under the provisions of this chapter may bring an action for
11 review in any court of competent jurisdiction.
12

13 **§66803: Collocation of Antennas and Equipment on or at Existing Towers**
14 **and other Structures**

15 (1) In deploying, or expanding commercial and public safety wireless
16 networks, the collocation of new antennas and equipment on existing
17 support structures, including buildings, utility poles, water towers or
18 existing conforming or non-conforming communication towers is preferred
19 over constructing new towers or support structures.
20

21 (2) Irrespective of Item (1) of this Section, an application for collocation on
22 an existing structure other than a utility pole may be subject to the issuance
23 of a building permit and any cost-based fee associated with such a permit.
24

25 (3) The authority may deny an application to construct a new Wireless
26 Support Structure based on an applicant's unwillingness to evaluate the

1 reasonable feasibility of collocating new antennas and equipment on an
2 existing structure or structures within the applicant's search ring.

3
4 (4) The authority may not deny an application to construct a new wireless
5 communications support structure under Item (3) of this Section if evidence
6 is provided that collocation on an existing structure is technically infeasible
7 or unduly economically burdensome on the wireless service provider.

8
9 **§66804. Limitations.**

10 An authority may not:

11 (1) Impose environmental testing, sampling, or monitoring requirements or
12 other compliance measures for radio frequency emissions on wireless
13 communications facilities that are categorically excluded under the FCC's
14 rules for radio frequency emissions pursuant to 47 CFR 1.1307(b)(1);

15
16 (2) Institute a moratorium on the construction of new Wireless Support
17 Structures lasting over ninety (90) days in duration or institute any such
18 moratorium within six (6) months of the conclusion of any previous
19 moratorium on the construction of Wireless Support Structures.

20
21 (3) Charge an application fee, consulting fee or other fee associated with the
22 submission, review, processing and approval of a permit that is not required
23 for other types of commercial development within the authority's
24 jurisdiction. Fees imposed by an authority or by a third-party entity
25 providing review or technical consultation to the authority, cannot exceed
26 what is usual and customary. In no case should total charges and fees

1 exceed the cost for a collocation or for the placement and construction of a
2 new wireless facility and/or support structures.

3
4 (4) Permit third party consultants to charge wireless telecommunications
5 service providers for any travel expenses incurred in the consultant's review
6 of wireless telecommunications permits.

7
8 (5) Establish or enforce regulations or procedures for RF signal strength or
9 the adequacy of service quality in the consideration of any application for
10 the construction, modification, maintenance, or operation of a wireless
11 facility and/or support structure.

12
13 (6) Impose surety requirements, including bonds, escrow deposits, or any
14 other type of financial surety, to ensure that abandoned or unused facilities
15 can be removed unless the jurisdiction imposes similar requirements on
16 other permits for other types of commercial development or land uses. If
17 surety requirements are imposed they must be competitively neutral, non
18 discriminatory, reasonable in amount and commensurate with the historical
19 record for local facilities and structures that fall into disuse.

20
21 (7) Prohibit the placement of emergency power systems that comply with
22 Federal and local environmental requirements;

23
24 (8) Discriminate on the basis of the ownership of any property, structure or
25 tower when promulgating rules or procedures for siting wireless facilities or

1 for evaluating applications for collocations or new wireless facilities or
2 support structures.

3
4 (9) Condition the approval of a new support structure or collocation on the
5 agreement of the structure owner to provide space on the structure for local
6 governmental services at less than the market rate.

7
8 (10) Limit the duration of any permit for a wireless facility or support
9 structure when evaluating an application for a wireless facility or
10 collocation.

11
12 (11) Require an applicant to construct a Distributed Antenna System in lieu
13 of constructing a new Wireless Support Structure or collocating on an
14 existing structure, such as a utility pole, existing tower or building.

15
16 **§66805. Severability.** If any provision of this Article or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect other
18 provisions or applications of the Article which can be given effect without the
19 invalid provision or application, and to that end the provisions of this Article are
20 declared to be severable.