

AUTHORITY

Consistent with the mandate of the Virgin Islands Building Code, 29 V.I. CODE ANN. §292 (a), and pursuant to 29 V.I. CODE ANN. § 312(2) these Rules and Regulations are implemented as hereby and herein provided.

312 (2) - 1: TITLE

Establishment of the Virgin Islands Wireless Facility Standard Rules and Regulations

312 (2) - 2: PURPOSE

The purpose of these regulations is to establish wireless facility standards and requirements in order to achieve the following general intentions and purpose of the Government of the Virgin Islands:

- (a) To establish regulatory procedures and standards for the public and private use of all applicable wireless facilities (towers and antennas);
- (b) To promote the public health, safety, and general welfare of residents and businesses of the US Virgin Islands, while also promoting a wireless infrastructure to accommodate the wireless service needs of residents and businesses of the US Virgin Islands.

312 (2) - 3: CONSISTENCY WITH FEDERAL AND TERRITORIAL LAW;

SEVERABILITY; REPEAL

These regulations are intended to be consistent with the Communications Act of 1934, as amended. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or application of the regulations.

312 (2) - 4: DEFINITIONS

Unless it is otherwise provided or the context requires a different construction, the following terms when used in these regulations shall have the meaning as herein defined:

- (a) ***Alternative Tower Structure***: Screened roof or wall mounted antenna, sugar mills, clock towers, flagpoles, sculptures, bell steeples, utility poles, tree poles (monopalms or monopines), and similar alternative-design mounting structures that attempt to conceal the presence of antennas or towers.

- (b) **Antenna:** Any structure or device used to receive or transmit electromagnetic waves, including both directional antennas, such as panels, microwave dishes, and omni-directional antennas, such as whips, but not including satellite earth stations. This definition does not include any structure erected solely for a residential or non-commercial individual use, such as television antennas, satellite dishes, or amateur radio antennas, nor does it include utility poles.
- (c) **Applicant:** The individual, organization, partnership, association, corporation, or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority, or commission of such governments including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing that applies for a building permit to construct a wireless facility, tower or antenna.
- (d) **Associated Structure:** The physical structures designed to house the equipment necessary to provide wireless services. This definition does not include wiring, cabling, or antennas that are not housed in the physical structure.
- (e) **Co-location:** The use of a common support structure by two or more service providers or by one or more owners for more than one type of communications technology (multiple antennas).
- (f) **Commissioner:** Commissioner of Planning and Natural Resources.
- (g) **Conceal:** To enclose a wireless facility within a natural or man-made feature resulting in the wireless facility being either invisible or made part of the feature enclosing it.
- (h) **Department:** The Virgin Islands Department of Planning and Natural Resources.
- (i) **DFW:** Division of Fish and Wildlife.
- (j) **Division:** The Division of Building Permits of the Department.
- (k) **FAA:** Federal Aviation Administration.
- (l) **FCC:** Federal Communication Commission.
- (m) **Height:** The vertical measurement from the ground to the vertical apex of the wireless facility, not including lighting rods as required.

- (n) **Monopole:** A single, self-supporting pole-type structure, supporting a fixture designed to hold one (1) or more antennas, excluding utility poles.
- (o) **NEPA:** National Environmental Policy Act.
- (p) **Owner:** Any person, who owns, leases, operates, controls, or supervises a wireless facility.
- (q) **Pre-existing towers and antennas:** Any tower or antenna on which a permit has been properly issued prior to the effective date of these rules and regulations.
- (r) **Stealth Telecommunications Facility:** Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.
- (s) **Substantial Modification or Substantially Modify:** Improvements to an existing structure that would:
 - (1) increase the existing vertical height of the structure by more than ten percent (10%), or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet whichever is greater; or
 - (2) would involve adding an appurtenance to the body of a tower that would protrude horizontally from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable).
- (t) **Temporary Facility:** A self-contained tower (may be known as a “carrier on wheels” or “cell on wheels”) that can be moved to a location and/or set up to provide wireless service on a temporary or emergency basis. A temporary tower may be vehicle-mounted and contain a telescoping boom as the antenna support structure.
- (u) **TIA-222-G:** The minimum criteria for specifying and designing antenna towers and antenna-supporting structures, including guidelines for antennas, mounts, and lines.
- (v) **TIA-222-G-1:** The structural standards for antenna towers and supporting structures, this is an addendum to TIA-222-G; provides the requirements for structural design and fabrication of new, and modification of existing

structural antennas, antenna-supporting structures, mounts, structural components, guy assemblies, insulators and foundations.

- (w) **Tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers along with any separate building on the lot used to house any supporting electronic equipment. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers, and the like. This definition does not include any structure erected solely for a residential or non-commercial individual use, such as television antennas, satellite dishes, or amateur radio antennas, nor does it include utility poles.
- (x) **Utility Pole:** A structure owned and/or operated by a public utility that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity or to provide lighting.
- (y) **Wireless Service:** Any commercial mobile service, common carrier wireless exchange service, cellular service, personal communication service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.
- (z) **Wireless Facility:** The set of equipment and network components that includes, antenna transmitters, towers, base stations, power supplies, cabling and associated equipment necessary to provide wireless services to a discrete geographic area, excluding alternative tower structures.
- (aa) **Wireless Service Provider:** Any person or entity providing Wireless Services in the US Virgin Islands.

312 (2) - 5: APPLICATION REQUIREMENTS

No installation or construction of a new or substantial modification of an existing wireless facility shall commence before the issuance of a building permit by the Division. Prior to the issuance of a building permit, an applicant shall submit a completed Wireless Facilities Application, including a general statement of the proposed work, with the following appropriate accompanying documents:

- (a) Names and Mailing Addresses of the owner of the wireless facility, owner of plot, and applicant;
- (b) Names and addresses of all engineers, architects, or contractors who will supervise the work and the names and addresses of all subcontractors who will perform the work;

- (c) Receipt from the Department showing that a non-refundable deposit of \$40.00 has been paid on the permit fee;
- (d) When the estimated value of the proposed construction or substantial modification of a wireless facility exceeds \$1000 the application forms shall be accompanied by two (2) sets of plans and specifications.
- (e) A Clearance Letter from the State Historic Preservation Office (SHPO);
- (f) A Clearance Letter from DFW;
- (g) A site plan for main towers, drawn to scale showing the property's boundaries, the location- to include Plot number, Estate, and Quarter, height, and dimensions of existing and proposed buildings or structures on the same and on adjoining lots, adjacent streets or roads, natural or manmade features, topography, fencing, lighting, and landscaping plan;
- (h) An Earth Change or Coastal Zone Management Permit;
- (i) Description of the proposed or existing tower and wireless facility including certification by a licensed structural engineer regarding the structural integrity of the facilities, its structural capacity, and evidence of compliance with FCC standards;
- (j) An inventory of existing towers or alternative tower structures suitable for wireless facilities within a half-mile radius of the existing site;
- (k) Maintenance plan. A description of anticipated maintenance needs, including frequency of service, equipment needs, and traffic, noise and safety impacts on such maintenance;
- (l) A NEPA Report;
- (m) FAA approval, if required; and
- (n) Co-location Feasibility Report.

312 (2) - 6: SUPPLEMENTAL APPLICATION REQUIREMENTS

- (a) In addition to the application requirements of section 312 (2) - 5, an applicant shall provide the Department with the following supplemental information:
 - (1) Documentation of the elevation above grade for all proposed mounting positions for antennas to be co-located on a tower and the minimum distances between antennas;

- (2) Description of the tower's antenna capacity, by type, number, and elevation;
 - (3) Description of potential changes or additions to existing structures or towers that would enable them to provide adequate coverage;
 - (4) A map showing the area that will be served by the proposed wireless facility (tower or antenna), and the nature of the service to be provided by the wireless facility. Description of the output frequency, number of channels and the power output per channel for each antenna;
 - (5) A copy of the applicant's FCC license, or if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one antenna on the applicant's tower;
 - (6) A letter of intent committing the wireless facility owner and its successors to permit co-location of any tower if the additional users agree to meet reasonable terms and conditions for co-location, including compliance with all applicable FCC regulations, standards and requirements and the provisions of these rules and regulations and all other applicable laws;
 - (7) In the case of an application for additional antennas or other equipment installation on an existing wireless facility, evidence of an executed contract with the owner of the existing wireless facility; and
 - (8) Other information which may reasonably be required by the Commissioner, requested within thirty (30) days of submission of the application, in order to enforce the provisions of these regulations.
- (b) When a Wireless Service Provider determines that co-location is not feasible, the applicant shall provide the Division with a Co-location Feasibility Report from a qualified, USVI licensed structural or radio frequency engineer attesting that the proposed equipment cannot be reasonably co-located at an existing wireless tower so as to meet its coverage and capacity objectives; the certification shall include the following:
- (1) In the case of new facilities, demonstration that existing towers and structures within a one (1) mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and capacity to the community;
 - (2) The proposed equipment would exceed the structural or spatial capacity of the existing wireless facility and the existing wireless facility cannot be reinforced, modified or replaced to accommodate planned equipment;

- (3) The proposed equipment would materially impact the usefulness of other equipment at the existing wireless facility and such impact cannot be mitigated or prevented;
 - (4) The proposed equipment, alone or together with existing equipment, would create radio frequency interference and/or radio frequency radiation in violation of federal standards;
 - (5) Existing towers and structures cannot accommodate the proposed equipment at an elevation necessary to function reasonably or are too far from the area of needed coverage to function adequately; and
 - (6) Co-location of the equipment upon an existing tower would result in an unreasonable aesthetic impact.
 - (7) The applicant shall also provide the Department with the applicable documentation from Section 312 (2) -5.
- (c) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the co-location of the Tower by other Wireless Service Providers in the future and shall:
- (1) Respond within forty-five (45) days to a request for information from a potential co-location applicant;
 - (2) Negotiate in good faith concerning future request for co-location of the new Tower by other Wireless Service Providers;
 - (3) Allow co-location of the new Tower to the extent structurally feasible and service of existing tenants is not compromised if another Wireless Service Provider agrees in writing to pay reasonable rents and charges.
 - (4) Failure to abide by the conditions outlined above shall result in fines.

312 (2) – 7: CRITERIA FOR NEW AND SUBSTANTIALLY MODIFIED WIRELESS FACILITIES

Before the issuance of a building permit, any new tower or structure used primarily for the purpose of hosting a wireless facility must conform to TIA-222-G and TIA-222-G-1 and the following required standards:

- (a) To the extent commercially reasonable, wireless service providers shall co-locate antennas. All new towers shall be configured to accommodate

at least two wireless service providers. When co-location is not feasible, location of antennas on a new tower or in/on alternative tower structures may be permitted. Such structures shall not increase the height of the existing structure by more than 20 percent.

- (b) The minimum distance from the base of any tower to any property line shall not be less than one (1) times the total height of the tower, including antenna or equipment.
- (c) Associated structures (excluding towers) for the wireless facility shall not exceed more than 20 feet above the average height of the tree line measured within a 50 feet radius of the tower, unless the proposed elevation is reasonably necessary to provide adequate Wireless Service capacity or coverage or to facilitate co-location of facilities.
- (d) The Associated Structures of wireless facilities shall not be used for dwelling purposes.
- (e) When located on agriculturally or residentially zoned property or adjacent to a residentially utilized property; any new building constructed on a parcel as an attachment to an existing building, shall compliment the construction material and color(s) of the existing building.
- (f) The wireless facility and associated tower shall not unreasonably impair the peaceful enjoyment of neighboring properties. The Commissioner shall consider following factors in making a determination: level of noise, degree of fumes, odors, and activity, and intensity of glare.
- (g) The lighting of a wireless facility (tower or antenna) shall be consistent with FAA guidelines and have minimal spillover effect on adjoining property.
- (h) A wireless facility shall meet federal guidelines for providing signs indicating the presence of radio frequency emissions. The Department may condition a permit on the provision of appropriate fencing.
- (i) The wireless facility and associated structure(s) shall be screened by means of landscaping or berming whichever is deemed most appropriate to adequately screen the wireless facility from any adjoining residentially zoned/used property consistent with the following:

Buffering and screening of the wireless facility shall be installed to provide spatial separation and create visual block from adjacent properties and streets. A buffer shall be installed around the outside of all improvements on the site, including the tower and guy anchors, any ground buildings or equipment, and security fencing. Ground buildings located in a residential district may be located outside the buffered area if they are

constructed so the exterior appearance of the building has the appearance of a residential dwelling.

The buffer shall contain hedges or other plants that provide a year round 6 foot high screen. Existing vegetation and topography can be used as part of this screening.

The base of the tower and each guy anchor shall be surrounded by a solid security fence or wall at least 8 feet in height unless the tower and all guy anchors are mounted entirely on a building over 8 feet in height. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this section.

- (j) The wireless facility to the greatest extent feasible shall not interfere with the view from any public park, natural scenic vista, historic building or national historic district; or cause any significant disruption of a viewshed that provides context to an important historic or scenic resource. The effect of the wireless facility on the sensitivity or unique value of a particular view shall be minimized to the greatest extent feasible.
- (k) In order to ensure the health and safety of people and wildlife, a wireless facility must comply with the FCC's regulations, concerning radio frequency emissions. Certification must be submitted by the applicant demonstrating compliance.
- (l) The wireless facility shall not destroy or cause significant adverse impacts on important wildlife habitat. To the extent not required by FAA, if there are to be impacts, all reasonable means of minimizing the destruction or imperilment of such habitat or species shall be undertaken.
 - (1) Towers shall not be more than 199 feet above ground level, except in the event of public exigency as declared by the Governor. Towers of such a height that aviation safety lights are required shall use only white (preferable) or red strobe lights at night. Flashing lights shall be of a minimum number and intensity of lights and minimum number of flashes per minute allowable by the FAA. The use of solid red or pulsating red warning lights at night is prohibited to the extent not required by the FAA.
 - (2) Towers shall not be constructed in or near wetlands or other known bird concentration areas, in known migratory or daily movement flyways, or in habitat of threatened or endangered species.
 - (3) Tower designs should not require guy wires (e.g., lattice structures or monopoles are recommended). If guy wires are

required, these shall have daytime visual markers (bird flight diverter devices) on the wires to prevent collisions by diurnally moving species. Bird flight diverter devices should be installed at 10 to 30 foot intervals, depending on the type used and according to the manufacturer's specifications.

- (4) Towers and associated facilities shall be sited, designed and constructed so as to avoid or minimize habitat loss within and adjacent to the tower footprint. Road access and fencing shall be minimized to reduce habitat fragmentation and disturbance and to reduce above ground obstacles to birds in flight.
 - (5) If significant numbers of breeding, feeding, or roosting birds or bats are known to habitually use the proposed tower construction area, relocation to an alternate site is recommended. Seasonal restrictions on construction may be required to avoid disturbance during periods of high wildlife activity.
 - (6) Security lighting for on-ground facilities shall be down-shielded to keep light within the boundaries of the site.
 - (7) Division of Fish and Wildlife personnel shall be allowed access to the site to evaluate wildlife use, conduct dead animal searches, to place net catchments below the towers, and to place any monitoring equipment necessary to verify bird and bat movements. If DFW personnel confirm significant strikes, deaths or other significant adverse impacts of a tower on wildlife, adaptive management or mitigation strategies will be investigated and where appropriate will be required.
- (m)The wireless facility shall not have an unreasonably undue adverse aesthetic impact. In determining whether a wireless facility has an unreasonable undue adverse aesthetic impact, the Department shall consider the following factors:
- (1) The extent to which the proposed towers and equipment have been designed to conceal or blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
 - (2) In residentially zoned and/or utilized area(s), the use of a stealth telecommunications facility is required, if practicable.

- (3) The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
- (4) The degree to which the wireless facility will be concealed or screened by existing vegetation, topography, or existing structures.

312 (2) – 8: CO-LOCATIONS AND TEMPORARY FACILITIES

- (a) Co-location on existing towers and other suitable structures is the preferred method of wireless facility siting.
 - (1) If Co-locating, a letter of intent from a Virgin Islands licensed engineer is required to be submitted to the Division. The letter of intent shall provide the following information; the specifications of the antenna, location of antenna on tower, the tower's ability to accommodate the proposed antenna, and a Certified Maintenance Inspection Report, if applicable.
 - (2) Co-location is not subject to any design or placement requirements that are more restrictive than those in effect at the time of the initial antenna placement approval, to any other portion of these regulations, or be subject to a public hearing.
 - (3) Co-location shall be consistent with the designs and configurations of the supporting structure and any existing antenna.
 - (4) A pre-existing tower may be structurally modified in order to allow co-location and is not subject to the public hearing requirements in section 312 (2) – 9.
- (b) A temporary use permit must be obtained from the Division before a temporary wireless facility can be erected.
- (c) A temporary facility is permitted for use of no longer than twelve (12) months while constructing a permanent facility and no longer than ten (10) days for use during a special event.
- (d) The maximum height of a temporary facility is fifty (50) feet from grade.
- (e) A temporary facility is subject to all applicable provisions of this subchapter, excluding sections 312 (2) -5, 312 (2) -6, and 312 (2) -9.

312 (2) – 9: PUBLIC HEARING

Upon receipt of a completed application for a new construction or substantial modification of an existing structure, and all required documentation, the Department shall hold a public hearing on the application for a wireless facility or tower, no later than sixty (60) days after the application has been deemed complete.

(a) General Procedures for Public Hearings

Public notice of any hearing as required by these rules and regulations to be conducted by the Division of Comprehensive and Coastal Zone Planning shall be deemed to have been given when:

- (1) A notice setting forth the general purpose of any such hearing and the time and place thereof shall have been published in a newspaper of general circulation in the island district of the proposed wireless facility or tower at least twice at intervals of not less than two (2) days; the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days before such hearing;
- (2) The applicant, as well as the owners of any and all lot(s) within five hundred (500) feet of the proposed wireless facility or tower shall be notified by certified mail of the general purpose of the hearing and the time and place thereof at least fifteen (15) days prior to the date of the hearing; and have been invited to give testimony; and
- (3) A notice setting forth the general purpose of such hearing and the time and place thereof has been posted on the property in question, as well as on the Department's website.

(b) Transcription of Testimony

In hearings before the Department, all testimony, objections thereto, and ruling thereon shall be transcribed by a reporter employed by the Department for that purpose or recorded by a recording machine set up for that purpose.

(c) Report with Recommendation

The Division of Comprehensive and Coastal Zone Planning after due public notice and hearing shall transmit to the Commissioner a report containing its recommendation on the proposed application within thirty (30) days of the public hearing date.

312 (2) - 10: INSPECTIONS

The Commissioner shall require the owner of any wireless facility to:

- (a) Conduct inspections of the wireless facility every three (3) years to ensure its structural integrity and continuing compliance with these regulations; and to submit for approval a Certified Maintenance Inspection Report from a VI licensed structural engineer to the Division documenting the findings of the inspection.
- (b) Conduct inspections of the wireless facility, within one (1) month after any natural disaster, as declared by the Governor (such as hurricanes or earthquakes) to ensure the structural integrity of the wireless facility; and to submit for approval a Certified Maintenance Inspection Report from a VI licensed structural engineer to the Division documenting the findings of the inspection within two (2) months of the natural disaster.
- (c) If applicable, the report shall contain a compliance schedule detailing the required maintenance.

312 (2) - 11: VIOLATIONS

- (a) It is unlawful for any person to construct, install, modify, or operate a wireless facility, antenna, or tower without a permit issued by the Commissioner in compliance with this section.
- (b) All pre-existing constructed telecommunication facilities, antennas, and towers, covered by these regulations shall conform to these rules and regulations within six (6) months of adoption. A Telecommunication Compliance Construction Plan shall be submitted to the Department, by a licensed VI structural engineer, detailing the areas of non-compliance and the sequence and time line required for compliance. The Compliance Construction Plan shall at minimum include the following:
 - (1) The owner/operator of the tower;
 - (2) Date the tower was constructed;
 - (3) Details on the specification of the tower;
 - (4) Details on the current structural integrity of the tower;
 - (5) Details on the current capacity of the tower;
 - (6) Insurance (indemnification and casualty) on the tower; and
 - (7) Tower location as it relates to the property boundary lines.

- (c) All pre-existing telecommunications facilities, antennas, and towers are exempted from the requirements of section 312 (2) - 7(b) and 7(c) of this section.

312 (2) – 12: BONDING AND SECURITY INSURANCE

An applicant for a wireless facility or tower shall provide:

- (a) A bond indexed to inflation/deflation to the Government of the Virgin Islands on behalf of the Department in an amount that would be sufficient to cover the costs of removal and disposal of the wireless facility or tower components. The Department shall set the form and amount of the security. The Department shall also require the applicant to submit proof of property liability insurance (*minimum single limit amount of One Million Dollars*).
- (b) The term of the bond shall be negotiated with the Department. In addition, if the Department requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

312 (2) – 13: ABANDONMENT OR DISCONTINUATION OF USE

- (a) NOTIFICATION: Notice shall be provided to the Commissioner by the owner, thirty (30) days prior to abandonment or discontinuation of a wireless facility.
- (b) A wireless facility shall be deemed discontinued after six (6) months of continuous cessation of use. The Commissioner will issue a Notice of Abandonment or Discontinuation to the owner, if a voluntary notice is not submitted by the owner to the Department.
- (c) If, within sixty (60) days receipt of a Notice of Abandonment or Discontinuation, the owner provides the Commissioner with information showing that the wireless facility has not been abandoned, the Commissioner will withdraw the Notice.
- (d) REMOVAL: The owner shall remove the abandoned wireless facility within ninety (90) days of receipt of a Declaration of Abandonment or Discontinuation from the Department. All structural materials shall be removed from the site, and the excavation thus remaining shall be covered over or filled to the normal grade. (The Department shall require the applicant to provide a bond, or other form of financial guarantee acceptable to the Department to cover the cost of removal of the wireless facility, should the wireless facility be abandoned or cease to operate).

- (e) Unused portions of a Wireless Facility shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a wireless facility previously removed shall require a new permit.
- (f) FAILURE TO REMOVE: If an abandoned wireless facility is not removed within ninety (90) days, the Commissioner may execute the security and have the wireless facility removed.