

1 SB172
2 205559-4
3 By Senators Orr and Scofield
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 11-FEB-20

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to wireless telecommunications; to
12 establish a procedure to authorize wireless providers to
13 collocate, mount, or install small wireless facilities on
14 existing poles, or install new poles on the right-of-way of
15 the state or any agency, county, or municipality thereof; to
16 exempt small wireless facilities from certain zoning review
17 and approval procedures; to establish a procedure for the
18 permitting of the development of small wireless facilities and
19 poles in the rights-of-way of the state; and to establish
20 rates and fees for all permits for small wireless facilities.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. When used in this act, the following
23 words shall have the following meanings:

24 (1) ANTENNA. An apparatus designed for the purpose
25 of emitting radio frequency, to be operated or operating from
26 a fixed location pursuant to Federal Communications Commission
27 authorization, for the provision of wireless service. For

1 purposes of this subdivision, the term does not include an
2 unintentional radiator, mobile station, or device authorized
3 under 47 C.F.R. Part 15.

4 (2) ANTENNA EQUIPMENT. Equipment, switches, wiring,
5 cabling, power sources, shelters, or cabinets associated with
6 an antenna, located at the same fixed locations as the
7 antenna, and, when collocated on a structure, mounted or
8 installed at the same time as the antenna.

9 (3) ANTENNA FACILITY. An antenna and associated
10 antenna equipment.

11 (4) APPLICATION. A request by a wireless provider to
12 collocate, mount, or install small wireless facilities on or
13 adjacent to an existing, new, or replacement pole; or to
14 install, modify, or replace a pole associated with a small
15 wireless facility.

16 (5) AUTHORITY. The state or any agency, county,
17 municipality, district, or instrumentality thereof. The term
18 does not include state courts having jurisdiction over an
19 authority.

20 (6) COLLOCATE or COLLOCATION. Either of the
21 following:

22 a. Mounting or installing an antenna facility on a
23 pre-existing structure.

24 b. Modifying a structure for the purpose of mounting
25 or installing an antenna facility on that structure.

26 (7) COMMUNICATIONS FACILITY. The set of equipment
27 and network components, including wires, cables, and

1 associated facilities, used by a communications service
2 provider.

3 (8) COMMUNICATIONS SERVICE. Any of the following:
4 Cable service, as defined in 47 U.S.C. § 522; information
5 service, as defined in 47 U.S.C. § 153; telecommunications
6 service, as defined in 47 U.S.C. § 153; and wireless service.

7 (9) COMMUNICATIONS SERVICE PROVIDER. A provider of
8 communications services.

9 (10) ELECTRIC PROVIDER. An entity listed in
10 subsection (a) of Section 6.

11 (11) MICRO WIRELESS FACILITY. A small wireless
12 facility that meets both of the following qualifications:

13 a. It is not larger in dimension than 24 inches in
14 length, 15 inches in width, and 12 inches in height.

15 b. Any exterior antenna is no longer than 11 inches.

16 (12) NETWORK INTERFACE DEVICE. The
17 telecommunications demarcation device and cross-connect point
18 adjacent to the wireless facility or the structure supporting
19 the wireless facility and demarcating the boundary with any
20 wireline backhaul facility.

21 (13) POLE. A pole in the right-of-way that is or may
22 be used in whole or in part by or for wireline communications,
23 lighting, traffic control, signage, or a similar function, or
24 for the collocation of small wireless facilities. The term
25 does not include a building; billboard; monopole; tower,
26 either guyed or self-supporting; or an electric distribution

1 or transmission structure. Poles owned by an electric provider
2 are excluded from this act under Section 6.

3 (14) SMALL WIRELESS FACILITY. A facility that meets
4 each of the following conditions:

5 a. The facilities are any of the following:

6 1. Mounted on structures 50 feet or less in height,
7 including the antennas.

8 2. Mounted on structures no more than 10 percent
9 taller than other adjacent structures.

10 3. Do not extend existing structures on which they
11 are located to a height of more than 50 feet or by more than
12 10 percent, whichever is greater.

13 b. Each antenna associated with the deployment,
14 excluding associated antenna equipment, is no more than three
15 cubic feet in volume.

16 c. All other wireless equipment associated with the
17 structure, including wireless equipment associated with the
18 antenna and any pre-existing associated equipment on the
19 structure, is no more than 28 cubic feet in volume.

20 d. The facilities do not require antenna structure
21 registration under 47 C.F.R. Part 17.

22 e. The facilities are not located on tribal lands,
23 as defined under 36 C.F.R. § 800.16.

24 f. The facilities do not result in human exposure to
25 radio frequency in excess of the applicable safety standards
26 specified in 47 C.F.R. § 1.1307(b).

1 (15) STRUCTURE. A pole; tower, as defined in 47
2 C.F.R. § 1.6100(b); base station, as defined in 47 C.F.R. §
3 1.6100(b); or other building, whether or not it has an
4 existing antenna facility, that is used or to be used for the
5 provision of wireless service.

6 (16) WIRELESS FACILITY. Equipment at a fixed
7 location that enables wireless communications between user
8 equipment and a communications network, including both of the
9 following: Equipment associated with wireless communications;
10 and radio transceivers, antennas, coaxial, metallic, or
11 fiber-optic cable located on, in, or under a pole or wireless
12 support structure, or otherwise adjacent to such structures,
13 regular and backup power supplies, and comparable equipment,
14 regardless of technological configuration. The term includes
15 small wireless facilities. The term does not include any of
16 the following: The structure or improvements on, under, or
17 within which the equipment is collocated; wireline backhaul
18 facilities; or coaxial, metallic or fiber-optic cable that is
19 between structures or that is otherwise not adjacent to a
20 particular antenna or the structure supporting the antenna.

21 (17) WIRELESS INFRASTRUCTURE PROVIDER. Any person,
22 including a person authorized to provide telecommunications
23 service in the state, that builds or installs facilities for
24 the provision of wireless service, but that is not either a
25 wireless service provider or an electric provider.

26 (18) WIRELESS PROVIDER. A wireless infrastructure
27 provider or a wireless service provider.

1 (19) WIRELESS SERVICE. Any services using licensed
2 or unlicensed radio spectrum, including the use of Wi-Fi,
3 whether at a fixed location or mobile, provided to the public.
4 The term does not include services provided by an electric
5 provider using wireless devices, facilities, or equipment in
6 support of services of the electric provider.

7 (20) WIRELESS SERVICE PROVIDER. A person who
8 provides wireless service.

9 (21) WIRELINE BACKHAUL FACILITY. An above-ground or
10 underground wireline facility used to transport communications
11 data or other electronic communications from a wireless
12 facility network interface device to a communications network.

13 Section 2. (a) An authority may not deny a wireless
14 provider the right, as a permitted use subject to Section 3
15 and the authority's requirements not in conflict with this act
16 or a then-existing final order of the Federal Communications
17 Commission (FCC), to do either of the following:

18 (1) Collocate, mount, or install small wireless
19 facilities on or adjacent to existing, new, or replacement
20 poles in the right-of-way.

21 (2) Install, modify, or replace its own poles, or,
22 with the permission of the owner, a third party's poles,
23 associated with a small wireless facility, along, across,
24 upon, and under the right-of-way controlled by the authority.

25 (b) For purposes of this section, any new or
26 modified pole may not exceed the greater of either of the
27 following:

1 (1) Ten feet in height above the tallest existing
2 pole in place as of July 1, 2020, located within 500 feet of
3 the new pole in the same right-of-way controlled by the
4 authority.

5 (2) Fifty feet above ground level.

6 (c) The small wireless facilities and associated
7 poles shall be installed and maintained in accordance with the
8 authority's requirements not in conflict with this act or a
9 then-existing final order of the FCC and as not to obstruct or
10 hinder the usual travel and public safety on the right-of-way
11 and adjacent roads and bridges or obstruct the legal use of
12 the right-of-way by utilities.

13 (d) A wireless provider may collocate a small
14 wireless facility and install, maintain, modify, operate and
15 replace a pole that exceeds these height limits along, across,
16 upon, and under the right-of-way, subject to applicable zoning
17 regulations or other applicable requirements of the authority.

18 Section 3. (a) Subject to the limitations
19 established in this act, small wireless facilities and
20 associated poles are not subject to zoning review or approval
21 if they are located in the right-of-way under the control of
22 an authority and otherwise comply with this act and a
23 then-existing final order of the Federal Communications
24 Commission.

25 (b) Within 10 days of receiving an application, an
26 authority shall determine and notify the applicant in writing
27 whether the application is complete. If the authority

1 determines the application is incomplete, the authority shall
2 specifically identify the missing information and specify the
3 requirement creating the obligation to submit the missing
4 documents or information in the written notice. If the written
5 notice of incompleteness is provided within 10 days of
6 receiving the application, the processing deadlines in
7 subsection (c) shall restart at zero on the date the applicant
8 submits all the documents and information identified by the
9 authority to render the application complete.

10 (c) Applications shall be processed on a
11 nondiscriminatory basis. Applications not requiring a written
12 notice of incompleteness shall be approved or denied within
13 the following: 60 days of receipt of an application involving
14 collocation of a small wireless facility using an existing
15 structure; and 90 days of receipt of an application involving
16 deployment of a small wireless facility using a new or
17 replacement pole. For those applications requiring a
18 resubmittal following the delivery of a written notice of
19 incompleteness, the time limitations for approval or denial
20 established in this subsection shall begin on the first date
21 after receipt of all the documents and information identified
22 by the authority. The processing deadline may be tolled by
23 agreement of the applicant and the authority. If an authority
24 fails to act on an application within the review period
25 provided for in this subsection, the applicant may provide the
26 authority, by certified mail, a formal notice stating that
27 unless the authority approves or denies the application within

1 20 days from receipt of the notice, the application and any
2 associated permits will be deemed granted by operation of law
3 on the twenty-first day from receipt of the notice.

4 (d) An authority shall approve an application if it
5 complies with the authority's requirements for deploying small
6 wireless facilities and associated poles in the right-of-way
7 that are written, generally applicable, and adopted in
8 advance.

9 (e) An applicant seeking to collocate, mount, or
10 install small wireless facilities or to install, modify, or
11 replace an associated pole within the jurisdiction of a single
12 authority may file a consolidated application for small
13 wireless facilities and associated poles, provided that the
14 consolidated application shall be for a geographic area no
15 more than two miles in diameter. The approval of the
16 consolidated application shall apply to the collocation,
17 mounting, or installation of the multiple small wireless
18 facilities or associated poles. The denial of one or more
19 single small wireless facilities or associated poles that are
20 part of a consolidated application may not constitute a reason
21 for denying the remaining small wireless facilities or
22 associated poles included in the consolidated application. A
23 consolidated application that includes a request to install,
24 modify, or replace a pole shall be processed in accordance
25 with the procedures and shall be subject to the 90-day review
26 period established in this act.

1 (f) An authority may not require an application or
2 any other approval or charge fees or rates for any of the
3 following that are in compliance with any applicable codes:

4 (1) Routine maintenance conducted on small wireless
5 facilities by the holder of an approved application for the
6 small wireless facilities, provided the right-of-way is
7 restored to the pre-maintenance condition.

8 (2) The replacement of small wireless facilities
9 that are operated by the holder of an approved application for
10 the small wireless facilities, are substantially similar or
11 the same size or smaller, and still qualify as a small
12 wireless facility.

13 (3) The deployment, installation, placement,
14 maintenance, operation, or replacement of micro wireless
15 facilities that are suspended on cables that are strung
16 between existing poles by an entity with a franchise agreement
17 or other valid authorization which allows the entity to deploy
18 communications facilities in the rights-of-way.

19 (g) Notwithstanding subsection (f), the deployment
20 of a micro wireless facility that requires the installation,
21 placement, or replacement of any ground-mounted facilities in
22 the right-of-way shall be subject to any applicable authority
23 permitting processes.

24 (h) Notwithstanding subsection (f), an authority may
25 require a permit for work that requires excavation or the
26 closure of sidewalks or vehicular lanes or that otherwise
27 hinders the usual travel or public safety on the right-of-way

1 or adjacent roads and bridges or obstructs the legal use of
2 the right-of-way by utilities. The permit shall be issued to
3 the applicant on a non-discriminatory basis upon terms and
4 conditions applied to any other person's activities in the
5 right-of-way that require excavation or the closure of
6 sidewalks or vehicular lanes.

7 (i) In the event of any action under subsection (f),
8 the roads, bridges, and rights-of-way, to the extent
9 practicable in the reasonable judgment of the authority, shall
10 be restored to the condition prior to the action conducted by
11 the entity.

12 (j) (1) As part of the application process, an
13 authority may require a small wireless facility to be fully
14 operational within 360 days after the date the last or final
15 permit is issued, subject to the availability of wireline
16 backhaul, electric power, or other matters beyond the control
17 of the applicant. The authority and the applicant may agree to
18 extend the period.

19 (2) If a small wireless facility is not operational
20 in the time established under subdivision (1), the authority,
21 after providing 20-day prior written notice and reasonable
22 opportunity to cure, may do either or both of the following:

23 a. Cancel the authority's approval of the small
24 wireless facility or any associated new pole.

25 b. Cause the removal of the small wireless facility
26 or any associated new pole by the wireless provider at the
27 wireless provider's sole expense and in a time the authority

1 specifies after providing prior written notice to the wireless
2 provider.

3 Section 4. (a) Subject to Sections 2, 3, and 5, an
4 authority shall allow the collocation of small wireless
5 facilities on existing poles, other than any poles owned by an
6 electric provider, owned or controlled by an authority and the
7 mounting or installation of small wireless facilities on
8 replacement poles, other than any poles owned by an electric
9 provider, owned or controlled by an authority on
10 nondiscriminatory terms and conditions that comply with this
11 act.

12 (b) For structures owned or controlled by an
13 authority, an authority may provide a wireless provider the
14 option of either having the wireless provider perform any
15 necessary make-ready work through the use of qualified
16 contractors or having the authority perform any necessary
17 make-ready work at the sole cost of the wireless provider. If
18 the authority performs the make-ready work, the authority
19 shall provide a good faith estimate of the make-ready work,
20 including any pole replacement costs. Make-ready work shall be
21 completed within 60 days after a written acceptance of the
22 good faith estimate by the applicant.

23 (c) On completion of the make-ready work performed
24 by an authority at the request of a wireless provider, the
25 wireless provider, within 60 days of invoicing, shall
26 reimburse the authority for the authority's actual and
27 documented cost of the make-ready work, including labor and

1 materials. The cost invoiced to the wireless provider may not
2 exceed the good faith estimate by more than 10 percent.

3 Section 5. (a) Application fees for permits for
4 small wireless facilities shall be nondiscriminatory and may
5 not exceed the following:

6 (1) A five hundred dollar (\$500) non-recurring fee
7 for a single up-front application for collocation that
8 includes up to five small wireless facilities, with an
9 additional one hundred dollars (\$100) for each small wireless
10 facility beyond five in a consolidated application.

11 (2) A two hundred fifty dollar (\$250) non-recurring
12 fee for the modification or replacement of an existing pole
13 together with the mounting or installation of an associated
14 small wireless facility in the right-of-way.

15 (3) A one thousand dollar (\$1,000) non-recurring fee
16 for the installation of a new pole together with the mounting
17 or installation of an associated small wireless facility in
18 the right-of-way.

19 (b) If an authority elects to charge for access to
20 the right-of-way or collocation on poles owned or controlled
21 by the authority in the right-of-way for small wireless
22 facilities, the rates shall be nondiscriminatory and may not
23 exceed one hundred dollars (\$100) per small wireless facility
24 per year for access to and use of the right-of-way and one
25 hundred seventy dollars (\$170) per year per small wireless
26 facility collocated, mounted, or installed on or adjacent to
27 poles owned or controlled by an authority.

1 Section 6. (a) This act does not apply to any poles
2 or structures owned by an electric provider, whether used for
3 lighting, distribution, transmission, or otherwise. This act
4 also does not apply to the equipment, easements, or business
5 activities of any of the following:

6 (1) A utility, as defined under Section 37-4-1, Code
7 of Alabama 1975.

8 (2) Any board or public corporation incorporated or
9 organized for the acquisition or operation of an electric
10 distribution system under Chapter 50, Title 11, Code of
11 Alabama 1975, including, but not limited to, Sections
12 11-50-490 through 11-50-506, Code of Alabama 1975, and any
13 city or town that shall have established and is operating a
14 system for the distribution of electric power and energy
15 pursuant to Article 1 of Chapter 50, Title 11, Code of Alabama
16 1975.

17 (3) An electric cooperative incorporated or
18 organized under Chapter 6 of Title 37, Code of Alabama 1975.

19 (4) An electric membership corporation incorporated
20 or organized under Chapter 7 of Title 37, Code of Alabama
21 1975.

22 (5) The parents, affiliates, or subsidiaries of any
23 of the entities described in this section, provided they are
24 not acting as a wireless provider.

25 (b) Nothing in this act shall affect or alter, or be
26 construed to affect or alter, the terms of any pole attachment

1 agreement entered into between or among a wireless provider
2 and an electric provider.

3 (c) When a wireless provider collocates, installs,
4 or mounts a small wireless facility pursuant to a pole
5 attachment agreement with an electric provider, an authority
6 may only restrict the wireless provider's access to the
7 right-of-way as described in Section 2. In such a situation,
8 the authority shall comply with the application process set
9 forth in Section 3, and any fees and rates paid to the
10 authority by the wireless provider are subject to the limits
11 set forth in Section 5.

12 Section 7. (a) An authority exercising its authority
13 established by this act may not be subject to suit or
14 otherwise be responsible for the alleged negligence,
15 wantonness, willfulness, recklessness, or any other claims for
16 alleged wrongful acts or omissions of wireless providers or
17 their officers, agents, contractors, subcontractors,
18 employees, or other representatives relative to the design,
19 location, placement, construction, maintenance, and operation
20 of small wireless facilities in an authority's right-of-way or
21 on an authority's infrastructure.

22 (b) Wireless providers shall indemnify authorities
23 and their elected and appointed officials, employees, and
24 authorized agents, or their insurers, and hold them harmless
25 from and against any and all claims, demands, actions, suits,
26 or proceedings in equity or law asserted by third parties for
27 damages, losses, liabilities, or costs of any kind, including,

1 without limitation, reasonable attorney's fees, as and when
2 incurred that arise from a material breach by a wireless
3 provider or any of its officers, employees, volunteers, or
4 authorized agents of any obligations set forth in this act; or
5 for any claims for the alleged negligence, wantonness,
6 willfulness, recklessness, or claims of any other alleged
7 wrongful acts or omissions of wireless providers or their
8 officers, agents, contractors, sub-contractors, employees, or
9 other representatives relative to the design, location,
10 placement, construction, maintenance, and operation of small
11 wireless facilities in an authority's rights-of-way or on an
12 authority's infrastructure. A wireless provider has no
13 obligation to indemnify or hold harmless against any
14 liabilities and losses due to or caused by the sole negligence
15 or willful misconduct of an authority or its employees or
16 agents.

17 Section 8. (a) Except as authorized under subsection
18 (b), during the period in which the small wireless facilities
19 of a wireless provider are located on or attached to the
20 authority's assets, including its poles, or rights-of-way, the
21 authority may require a wireless provider to do both of the
22 following:

23 (1) Carry, at the wireless provider's sole cost and
24 expense, the following types of third-party insurance:

25 a. Property insurance for the replacement cost of
26 all small wireless facilities.

1 b. Workers' compensation insurance, as required by
2 law.

3 c. Commercial general liability insurance of at
4 least two million dollars (\$2,000,000) per occurrence, with
5 respect to the wireless providers activities in, on, or around
6 the authority improvements or rights-of-way, including
7 coverage for bodily injury and property damage.

8 d. Environmental insurance.

9 (2) Include the authority and its officers,
10 officials, agents, contractors, and employees as an additional
11 insured on the commercial general liability policy and provide
12 certification and documentation of inclusion of the authority
13 in a commercial general liability policy as reasonably
14 required by the authority.

15 (b) In lieu of the requirements of subdivisions (1)
16 and (2) of subsection (a), during the period in which the
17 small wireless facilities of a wireless provider are located
18 on or attached to the authority's assets, including its poles,
19 or rights-of-way, the authority may allow the wireless
20 provider to provide a certificate of self-insurance,
21 acceptable to the authority, that demonstrates that the
22 wireless provider has adequate resources to self-insure in the
23 amounts set forth in subdivision (1) of subsection (a).

24 Section 9. (a) An authority may order a wireless
25 provider to remove, relocate, change, or otherwise alter the
26 wireless provider's small wireless facility or pole for any of
27 the following reasons, so long as all other occupiers of the

1 same right-of-way remove, relocate, change, or otherwise alter
2 their facilities under the same conditions as the wireless
3 provider:

4 (1) To perform construction, repair, maintenance, or
5 installation of an authority improvement in or upon the
6 right-of-way or the operations of the authority in or upon the
7 right-of-way.

8 (2) When the small wireless facility or pole is
9 interfering with or adversely affecting the proper operation
10 of an authority pole, traffic signal, or other equipment in
11 the right-of-way.

12 (3) To comply with traffic and public safety codes.

13 (b) Within 90 days of the issuance of a written
14 order from an authority, a wireless provider, at its own
15 expense, shall temporarily or permanently protect, support,
16 disconnect, remove, relocate, change, or otherwise alter the
17 position of a small wireless facility or pole within the
18 right-of-way.

19 (c) When an authority orders a wireless provider to
20 remove, relocate, change, or alter the position of a small
21 wireless facility or pole within the right-of-way, the
22 authority shall use its best efforts to give the wireless
23 provider a reasonably equivalent alternative location.

24 (d) If a wireless provider has not complied with an
25 order under subsection (a) within 90 days of the issuance of a
26 written order, the authority, without further notice to the
27 wireless provider and at sole cost and expense to the wireless

1 provider, may relocate any small wireless facility or pole as
2 ordered by the authority.

3 (e) Notwithstanding any other provision of this
4 section, an authority may remove a small wireless facility or
5 pole if the authority determines that the removal is necessary
6 to address an imminent risk to public safety. If circumstances
7 permit, the authority shall provide notice to the wireless
8 provider and an opportunity for the wireless provider to move
9 its own small wireless facility or pole to address the risk.
10 An authority that removes a facility or pole under this
11 subsection shall promptly notify the wireless provider of the
12 removal.

13 Section 10. (a) Nothing in this act shall be
14 interpreted to allow any entity to provide communications
15 services without compliance with all laws applicable to
16 communications service providers. Nor shall this act be
17 interpreted to authorize the collocation, installation,
18 placement, maintenance, or operation of any communications
19 facility, including a wireline backhaul facility, in the
20 rights-of-way, other than a small wireless facility or
21 associated pole.

22 (b) Except as it relates to small wireless
23 facilities subject to the permit and fee requirements
24 established pursuant to this act, and except as it relates to
25 any activities of an electric provider, and except as it
26 relates to regulations or requirements on communications
27 service specifically established by the constitution or by

1 state, local law enacted by the legislature, or federal law,
2 an authority may not otherwise adopt or enforce regulations or
3 requirements on the placement, operation, or maintenance of
4 communications facilities by a communications service provider
5 authorized to be in the rights-of-way; or otherwise impose or
6 collect any additional or separate tax, fee, or charge for any
7 service existing on July 1, 2020, or for the provision of
8 additional communications services provided by a
9 communications service provider that is authorized to be in
10 the rights-of-way.

11 Section 11. This act does not apply to an authority
12 that has entered into an agreement with a wireless provider,
13 or that has adopted an ordinance or other resolution, relating
14 to the permitting of small wireless facilities and poles in
15 the rights-of-way of the authority before May 1, 2020. In
16 order to remain exempt from the provisions of this act, an
17 authority shall modify the local agreement, ordinance, or
18 resolution to be in compliance with applicable federal laws,
19 orders, or regulations within 60 days from a final
20 non-appealable federal order, rule, or regulation relating to
21 small wireless facilities.

22 Section 12. This act shall be effective July 1,
23 2020, following its passage and approval by the Governor, or
24 its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 11-FEB-20

Reported from FRED as favorable with substitute 27-FEB-20

Read for the third time and passed as amended 05-MAR-20

Yeas 30
Nays 0

Patrick Harris,
Secretary.