

TOWNSHIP OF ORANGE

COUNTY OF IONIA, STATE OF MICHIGAN

ORDINANCE NO. 2003-1

Adopted: January 13th, 2003

Effective: Upon Publication

ORDINANCE NO 2003-1. TELECOMMUNICATIONS

Section 1. Purpose.

The purpose of this Ordinance is to regulate the access to and ongoing use of Public Rights-of-Way by Telecommunications Providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the Public Rights-of-Way pursuant to the Michigan Extension Telecommunications Rights-of-Way Oversight Act (“METRO Act”) (Act No. 48 of the Public Acts of 2002, as amended, being MCL 484.3101 et seq.), other State statutes (including, without limitation, MCL 247.183), and Article VII, § 29 of the 1963 Michigan Constitution by (1) promoting the health, safety, welfare, convenience, and prosperity of the state, (2) providing for the payment of permit fees as required under the METRO Act, (3) streamlining the process for authorizing access to and on-going use of the public rights-of-way by telecommunications provider; and (4) ensuring reasonable control over the managements of the public rights-of-way by Orange Township.

Section 2. Existing Permits.

This Ordinance shall not affect any existing rights that a provider or municipality may have under a permit issued by the Township or contract between the Township and the provider related to the use of the Public Rights-of-Way.

Section 3. Terms Defined.

The meaning of the terms used in this Ordinance shall be as follows:

- (1) “Authority” means the Metropolitan Extension Telecommunications Rights-of-way Oversight Authority.
- (2) “Broadband internet access transport services” means the broadband transmission of data between an end-user and the end-user's internet service provider's point of

interconnection at a speed of 200 or more kilobits per second to the end-user's premises.

- (3) "Commission" means the Michigan Public Service Commission in the Department of Consumer and Industry Services.
- (4) "METRO Act" or "Act" shall mean the Michigan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended, being MCL 484.3101 et seq.
- (5) "MTA" shall mean the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, as amended.
- (6) "Permittee" means a Telecommunications Provider which has been issued a Permit pursuant to this Ordinance.
- (7) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- (8) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, alley, easement, or waterway. Public right-of-way does not include a federal, state, or private right-of-way.
- (9) "Telecommunication facilities" or "facilities" or "Telecommunications System" means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities or systems do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, and service provided by any wireless, 2-way communications device.
- (10) "Telecommunication provider," "provider," and "telecommunication services" mean those terms as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, or service provided by any wireless, 2-way communication device. For the purposes of this act only, a provider also includes all of the following:

- (a) A cable television operator that provides a telecommunication service.
 - (b) Except as otherwise provided by this act, a person who owns telecommunication facilities located within a public right-of-way.
 - (c) A person providing broadband internet transport access service.
- (11) "Township" means the Township of Orange
- (12) "Township Board" means the Township Board of the Township of Orange or its designee. This subsection does not authorize delegation of any decision or function that is required by law to be made by the Township Board.
- (13) "Township Clerk" means the Township Clerk or his or her designee.

Section 4. Permits.

Unless otherwise provided in this Ordinance or the METRO Act, no Provider shall use the Public Rights-of-Way in the Township for its Telecommunications Facilities without a Permit issued pursuant to this Ordinance and the METRO Act. A Provider asserting rights under 1883 PA 129, MCL 48.1 to 484.10 must also obtain a Permit. Obtaining a Permit and paying the fees required by the METRO Act does not give a Provider a right to use conduit or utility poles. Permits previously obtained from the Township under the MTA, Section 251, shall satisfy the Permit requirement.

Section 5. Permit Application Procedures.

- (1) Application.
- (a) A Telecommunications Provider shall apply for a Permit pursuant to this Ordinance and the Metro Act. The form of the application shall be the Application for Access to and Ongoing Use of Public Ways by Telecommunications Providers that was approved by the Commission on August 16, 2001. The Provider shall provide three (3) copies of the application.
 - (b) Within 180 days from the effective date of this act, a Provider with facilities located in a public right-of-way as of the effective date of this act that has not previously obtained authorization or a permit under section 251 of the Michigan Telecommunications Act ("MTA"), 1991 PA 179, MCL 484.2251, shall submit an application for a permit to each municipality in which the provider has facilities located in a public right-

of-way. If a telecommunications provider is submitting an application under this section, it shall not be required to pay the \$500.00 fee required by the METRO Act or Section 5(3) of this Ordinance. The Authority may, for good cause, allow a Provider up to an additional 180 days to submit the application as required under this Subsection (b).

(2) Required Information.

- (a) Information on Application. The information required by the Township on its Application is the information contained on the Application for Access to and Ongoing Use of Public Ways by Telecommunications providers approved by the Commission on August 16, 2001 (“Application”). The information contained on the Application is incorporated by reference as the information required by this Ordinance.
- (b) Route Maps: The Provider shall also include route maps showing the location of the provider’s existing and proposed facilities in the format prescribed by the Commission. Unless provided in a protective order by the Commission, Information included in the route maps submitted for the application of a Provider's existing and proposed facilities that is a trade secret, proprietary, or confidential information is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (c) Additional Information: The Township may request the Provider provide information in addition to the information provided on the Application if either of the following conditions is met.
 - (I) If the parties agree, the information shall be provided as an additional part of the Application; or
 - (ii) If the parties cannot agree on the requirement of additional information requested by Township, either the Township or the Provider shall notify the Commission, which shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. The Commission may order that the permit be temporarily granted pending resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the Commission for a review and determination of a resolution of the dispute. Except if the request is for emergency relief under Section 18(1) of the METRO Act, the determination by the Commission under this subsection shall be issued within 60 days from the date of the request to the Commission. The interested parties to the dispute

may agree to an extension for up to 30 days of the 60-day requirement.

- (3) Application Fee. The Application shall be accompanied by a one-time application fee of \$500.00 unless otherwise provide for in this Ordinance or the METRO Act.

Section 6. Permit Approval or Denial; Route Maps.

- (1) Permit Approval or Denial.
 - (a) Within 45 days after the Township Clerk after a complete application is filed, the Township Board shall approve, approve with conditions, or deny the Application.
 - (b) The form of the permits and the provisions of the Permit shall be those provisions approved by the Commission on August 16, 2001. The Permit issued may be a bilateral or unilateral permit.
 - (c) The Township shall not unreasonably deny an application for a Permit.
- (2) Notice to Commission. The Township shall notify the Commission when it grants or denies a Permit, including information regarding the date on which the Application was filed and the date on which the permit was granted or denied.
- (3) Route Maps upon Completion. Within 90 days after the substantial completion of construction of new facilities in the Township, the Provider shall supply route maps in the form prescribed by the Commission showing the location of the Telecommunications facilities to the Commission and the Township.

Section 7. Authority to Impose Conditions on Permit.

The Township Board may impose conditions limited to the Provider's access and usage of any public rights-of-way on a Permit to protect the public health, safety and welfare.

- (1) The Township may impose the conditions contained in the Permits approved by the Commission on August 16, 2001.
- (2) The Township may impose additional or different conditions or permit terms that are related to the Provider's access and usage of any public right-of-way, including but not limited to requiring that the Provider install the Telecommunications Facilities underground, or the Provider may request different terms if :

- (a) The Provider and the Township may agree to the additional or different Permit term. The Township Board may, in its discretion, agree to a different or additional term. If the Provider requests a different or additional term in its application for a Permit, the Application shall describe the Provider's request for a modification or addition and the reasons for the request with specificity. If the Provider does not agree to provide the additional information, the Township may refuse to agree to an additional or different term.
 - (b) If the Provider and the Township do not agree on the additional or different permit terms, either the Township or the Provider shall notify the Commission, which shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. The Commission may order that the permit be temporarily granted pending resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the Commission for a review and determination of a resolution of the dispute. Except if the request is for emergency relief under Section 18(1) of the METRO Act, the determination by the Commission under this subsection shall be issued within 60 days from the date of the request to the Commission. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day requirement.
- (3) Requirement to Repair. Unless otherwise stated in the Permit, a Permittee excavating, installing or constructing facilities in the Public Rights-of-Way or temporarily obstructing the Public Rights-of-Way as authorized by the Permit, shall promptly repair all damage done to the surface of the Rights-of-Way and all installations on, over or below the public Rights-of-Way. The Permittee shall promptly restore the public Rights-of-Way to its preexisting condition. The Authority shall have the jurisdiction to require the repair and restoration of any Right-of-Way, including any State Right-of -Way, that has not been repaired or restored after installation.

Section 8. Annual Permit Fees.

- (1) Annual Maintenance Fee. Unless specifically exempted under the METRO Act, a provider must pay the Authority an annual maintenance fee. The Authority shall determine the amount of fees required for each Provider as required under the METRO Act.
- (2) Township Use of Funds. All funds received by the Township from the Authority shall be used by the Township solely for the Rights-of-Way related purposes.

Section 9. Performance Bond. The Permittee shall be required to post a bond not to exceed the reasonable cost to ensure that the Public Rights-of-Way are restored to the original condition during and after the Provider's access and use.

Section 10. Cable Operations. Pursuant to Section 13(6) of the Act, the Township shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

Section 11. Savings Clause. Pursuant to Section 13(5) of the METRO Act, if Section 8 of the METRO Act is found to be invalid or unconstitutional, the modification of fees under this Ordinance above shall be void from the date the modification was made.

Section 12. Annual Report. The Township may file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

Section 13. Reservation of Police Powers. This Ordinance shall not limit the Township's right to review and approve a Telecommunications Provider's access to and ongoing use of a public right-of-way or limit the Township's authority to ensure and protect the health, safety, and welfare of the public.

Section 14. Conflict. Nothing in this Ordinance shall be construed in such a manner as to conflict with the METRO Act or other law. To the extent such conflict exists, the conflicting section of this Ordinance shall be preempted.

Section 15. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 16. Repealer.

All ordinances or portions of ordinances including but not limited to the Township's current Telecommunications Ordinance inconsistent with this Ordinance are hereby repealed.

Section 17. Effective Date.

This Ordinance shall become effective upon publication.

ADOPTED:

YEAS: First, Nash, McNally, Page, Weisgerber_

NAYS: None

STATE OF MICHIGAN)
)
COUNTY OF IONIA)

I, the undersigned, the duly qualified and acting Township Clerk of the Township of Orange, Ionia County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a regular meeting held on the 13th day of January, 2003.

Merry McNally, Township Clerk

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