



# Policy For Communication Service Provider Facilities Within Highway Right-of-Ways

January 3, 2017

Policy to be Implemented by Road Commissions

## Proposed Action for County Road Commissions:

### The Problem: Proliferation of Communication Facilities

County Road Commissions periodically receive right-of-way permit requests from communication service providers (“CSP’s”). These often involve broadband and wireless network facilities. Some of these CSP’s balk at the authority of Road Commissions to impose terms and conditions on the location of their facilities within the right-of-ways.

Road Commissions receive their right-of-way authority from a number of statutes and the Michigan Constitution. Road Commissions act as trustees of right-of-ways to protect public safety and convenience. In contrast, CSP’s are motivated to place their facilities in the public right-of-ways as quickly and as cheaply as possible. If each CSP is allowed to place its own facilities as it pleases, right-of-ways could become congested and overburdened, jeopardizing public safety and convenience.

### The Solution: Preemptive Policy Implementation

To help County Road Commissions avoid these problems, MCRC SIP has prepared this guideline and the attached sample policy. The policy is meant to provide a clear and consistent structure for evaluating CSP right-of-way permit applications.

The policy’s primary purpose is to allow Road Commissions to fulfill their obligation to protect public safety and convenience in the use of right-of-ways, and, at the same time, strike a balance with the ever changing technological demands of the public in a manner that is competitively neutral. In doing so, the policy sets clear expectations for CSP’s concerning how the Road Commission will exercise its discretion to treat them fairly, and promote public safety and convenience. Road Commissions benefit the public efforts by accommodating the changing technological demands while maintaining reasonable control over public right-of-ways and attempting to avoid unnecessary disputes.

### *Road Commission Utility Authority*

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*“Except as otherwise provided in this constitution, the right of all counties...to reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.” Mich. Const. Art 7 § 29.*

*“In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced.”*

*MCL 247.184.*



**Alger County Road Commission Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Way**

**WHEREAS**, the Board of County Road Commissioners for the County of Alger (the “Board” or “Road Commission”) is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law or delegated by the Alger County Board of Commissioners; and

**WHEREAS**, real property interests—including easements, various fees, and the right to regulate related to the use of public right-of-ways within the county road system—have been vested in the Road Commission to be held in trust for the benefit of the public; and

**WHEREAS**, the Road Commission intends to discharge its obligations as trustee of those certain real property interests in a manner that benefits and protects the public generally, and any adjacent landowners specifically; and

**WHEREAS**, Article 7, §29 of the Michigan Constitution of 1963 reserves to county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and

**WHEREAS**, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables, poles or like structures upon, over or under a county right-of-way including any improved highway or bridge; and

**WHEREAS**, MCL 224.19b(1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and

**WHEREAS**, MCL 224.19b(2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and

**WHEREAS**, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and

**WHEREAS**, communications technologies are constantly evolving, resulting in the potential for proliferation of communication service facilities within the public right-of-ways which carry the potential, if not appropriately managed, to jeopardize the safety and convenience of the public; and

**WHEREAS**, those seeking to install and operate Communication Service Provider Facilities within county highway right-of-ways to meet demand for such service, gain a pecuniary profit therefrom; and

**WHEREAS**, Certain entities seeking to install Communication Service Provider Facilities claim right of way access as a benefit of utility status; regarding which the Road Commission specifically reserves its right to challenge these claimed benefits and status as utilities, regulated or otherwise; and

**WHEREAS**, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of the public right-of-ways under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and

**WHEREAS**, the public right-of-ways under the Road Commission's jurisdiction are used by and useful to private enterprises including the Applicant and others engaged in providing Communication Services to citizens, institutions, and businesses that are served by the county road system; and

**WHEREAS**, the right to access and/or occupy portions of such public right-of-ways for limited times, for the business of providing communication services, is a valuable economic privilege; and

**WHEREAS**, beneficial competition between providers of communication services can be furthered by the Road Commission's consent to locate within and for rights to use the public right-of-ways on non-discriminatory and competitively neutral terms and conditions; and

**WHEREAS**, the Applicant is a private enterprise engaged in installing facilities related to and/or providing various Communication Services; and

**WHEREAS**, the Road Commission will grant its consent pursuant to its constitutional and statutory authority to manage and control its public right-of-ways, and will issue a right-of-way permit in consideration of the terms and conditions set forth herein:

## **1. Purposes**

The purposes of this Policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of communication services via the preceding and following statements of interest:

- 1.1. Establish a local policy concerning Communication Service Provider Facilities for use of the public right-of-ways that also serves the Road Commission's statutory mandate to make the rights-of-way under its jurisdiction safe for public travel. ;
- 1.2. The Road Commission specifically reserves its right to alter, amend and adjust these policies where public safety or convenience requires on a per application basis;
- 1.3. Establish a local policy that promotes beneficial competition between providers of communication services on non-discriminatory and competitively neutral terms and conditions; and that ensures that the Road Commission retains the authority and ability to act to protect the public safety and welfare in the face of multiple rapidly-changing industries, including the communications industry, that are placing increasing demand on public property and resources;
- 1.4. Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public right-of-ways by Communications Providers, and their respective facilities and licenses;
- 1.5. Permit and manage reasonable access to the public right-of-ways under the jurisdiction of the Road Commission for communications purposes on a competitively neutral basis, to the extent required by law;
- 1.6. Conserve the limited physical capacity of the public rights of ways held in trust for the benefit of the public by the Road Commission, and over which the Road Commission shares jurisdiction, to a limited extent, with other governmental entities;
- 1.7. Assure that the Road Commission's current and ongoing costs of granting and regulating private access to and use of its public right-of-ways are fully paid by the persons seeking such access and causing such costs;
- 1.8. Secure fair and reasonable compensation to the Road Commission and the residents of Alger County, in a nondiscriminatory manner, for permitting private use of the public right-of-ways;
- 1.9. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;
- 1.10. Assure that all persons or entities providing communication services within public right-of-ways in the county highway system comply with all state, federal and local laws;

- 1.11. Enable the Road Commission to manage its obligations to the public generally, and adjacent landowners specifically, consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- 1.12. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:
  - 1.12.1. Communication Service Provider Facilities are installed and maintained within public right-of-ways under the jurisdiction of the Road Commission in such manner and at such points so as not to inconvenience the public use of the public right-of-ways or to adversely affect the public safety and welfare;
  - 1.12.2. All nonpublic users of the right-of-ways under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the actual costs incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of the facilities of such users. Further, that insurance and bonding be secured to assure that such defense, reimbursement and indemnity is available.

## **2. Definitions**

- 2.1. For the purposes of this Policy, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this title shall be construed consistent with Title 47 of the United States Code and Chapter 484 of the Michigan Compiled Laws. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended. "Applicant" means a "Communication Service Provider."
- 2.2. "Communication Service Provider" and related "Facilities" as used herein, may include broadband, telecommunications and wireless related infrastructure as required by communication service providers and their various contractors, in order to provide voice, video, and/or data, to the public or other end users, and necessary infrastructure including, but not limited to wirelines including copper wire, fiber optic cable, or coaxial cable, and wireless including antennas, radios and, those related support structures, all as deemed necessary and as specifically approved by the Commission in its written Permit if and when issued.
- 2.3. A person that operates under written agreement with a Communication Provider to provide communication service over a Communications Service Facility or to install communications service facilities, shall be treated as a Communication Service Provider

for purposes of this Policy. A copy of all such agreement(s) shall be furnished upon application for a permit under this policy.

- 2.4. "Public Right-of-Way" means the area on, below, or above any land acquired or dedicated for public roads, highways, streets, alleys, easements, or waterways, to the extent the Road Commission has jurisdiction and the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 2.5. "Person" means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.
- 2.6. "Right-of-way permit" as used herein means the County Road Commission's legal authorization, terminable as defined in the permit, to use a particular, discrete, and limited portion of the public right-of-way to construct, operate, or repair a Communication Service Provider Facility. The term "right-of-way permit" shall not mean or include:
  - 2.6.1. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable city, village or township required by state or local law;
  - 2.6.2. Any other permit, authorization or agreement required in connection with operations on public streets or property.
  - 2.6.3. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by the right-of-way permit, including, but not limited to, permits for placing devices on or in poles, conduits, other structures, or on railroad easements owned by any public or private entity.

### **3. Policy Guidelines**

The administration of this Policy shall be governed by the following Communication Service Provider Facility policy guidelines:

- 3.1. The Road Commission supports efforts to establish an open, competitive marketplace for communication services that also serves the Road Commission's statutory mandate to promote safety and convenience in the use of public right-of-ways under its jurisdiction. The Road Commission promotes and encourages competition for communication services that make the latest and best technology available and keep service prices affordable for all county residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all communications providers and the preservation of local authority over matters of local impact.

3.2. The following policy guidelines express the commitment of the Road Commission to support communications services and to manage its right-of-ways proactively while balancing the interests and needs of the community:

3.2.1. WIRELESS: For purposes of wireless applicants involving small cells or DAS, the following technological standards apply:

3.2.1.1. In a typical suburban environment, a small cell provides a circular coverage pattern extending from 250 to 300 feet from the site to produce a minimum signal level of -85 DBM.

3.2.1.2. To achieve target area coverage, devices are typically installed at intervals of 500- 700 feet. On the basis of area, for total coverage one can assume a density of 25 to 30 sites per square mile

3.2.1.3. There are two areas or locations that are suitable for mounting the antennas used for small cell deployment:(1) the communications zone – typically 20 foot above ground level side mounted and 20”- 30” away from the pole and (2) the top of the pole, typically 30 to 35 feet above ground level

3.2.2. Use/Installation Priority Preference Considerations

3.2.2.1. The Road Commission’s primary goal is to make and maintain the right-of-ways under its jurisdiction safe and convenient for public travel. To further this goal, the Road Commission implements the following siting priority preferences:

3.2.2.1.1. Collocation Shall Be Required Whenever Possible

3.2.2.1.1.1. All agreements shall be subject to collocation with existing structures wherever possible and mandatory future collocation of all subsequent Communication Service Provider Facilities on any newly authorized structure under this Policy.

3.2.2.1.1.1.1. Any application that is not for a collocated facility must contain a statement justifying why collocation is not possible. Such statement shall include:

3.2.2.1.1.1.1.1. Such structure and technical information and other justifications as are necessary to document the reasons why collocation is not possible; and

3.2.2.1.1.1.1.2. A list of all eligible support structures and alternative structures considered as alternatives to the proposed location.

- 3.2.2.1.1.1.3. A written explanation why the alternatives considered were impossible due to technical or physical constraints.
  - 3.2.2.1.2. Stealth Installations Shall Be Required at the Discretion of the Road Commission
  - 3.2.2.1.3. New Structures Shall Be Limited to 45 Feet in Height
  - 3.2.2.1.4. No new Communication Service Provider Facility support structure may be erected in the public right-of-way within 500' of an existing Communication Service Provider Facility support structure.
  - 3.2.2.1.5. To the Greatest Extent Possible, placement of such facilities in Industrial Zones Shall Be Preferred, Followed By Commercial Zones, Followed By Residential Zones
  - 3.2.2.1.6. Wherever Possible, location on private property shall be preferred to location on public property
    - 3.2.2.1.6.1. An application shall contain a statement explaining why location on private property is not possible.
  - 3.2.2.1.7. To the greatest extent possible, facilities will be required to be located below ground.
  - 3.2.2.1.8. Collocation on an existing facility outside the right-of-way shall be preferred to collocation on an existing facility within the right-of-way.
  - 3.2.2.1.9. Locating a new facility outside the right-of-way shall be preferred to locating a new broadband or wireless facility within the right-of-way.
  - 3.2.2.1.10. Collocation on an existing facility within the right-of-way shall be preferred to locating a new facility within the right-of-way.
  - 3.2.2.1.11. Locating a new facility in the right-of-way shall only be permitted when the applicant demonstrates that locating a new facility outside of the right-of-way, or collocating on any existing facility, is not possible.
- 3.2.3. The Road Commission will manage access to the public right-of-ways for Communication Service Provider purposes in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for use of the public right-of-ways under the jurisdiction of the Road Commission.
- 3.2.4. Communication Service Provider Facility permits for location of facilities and all supporting equipment and structures will be managed to preserve the integrity of the county highway system's infrastructure, ensure efficient use of the property under



the jurisdiction of the Road Commission, and ensure compliance with state, federal and local law.

- 3.2.5. In order to effectively manage and regulate the use of public right-of-ways under the Road Commission's jurisdiction by private entities in the best interests of the public it is necessary for the Road Commission to reserve and exercise all legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any way to limit the discretionary, administrative or legislative authority of the Road Commission and its officials as respects the management and use of the Road Commission's public right-of-ways or in respect to the granting, delaying, or denying any right-of-way permit.

#### **4. General Provisions**

- 4.1. No Communication Service Provider shall install, construct, or otherwise place within public right-of-way under the jurisdiction of the [\*\*COUNTY NAME] County Road Commission any Communication Service Provider Facilities, except pursuant to the provisions of this policy.
- 4.2. Permit Required. A Communication Service Provider must obtain a permit prior to constructing any Communication Service Provider Facilities within a right-of-way under the jurisdiction of the Road Commission. The fact that a particular permitted Communication Service Provider Facility may be used for multiple purposes does not obviate the need to obtain a permit for other purposes unless applicable federal or state law prohibits the Road Commission from requiring such additional permit. No permit shall become effective without the grantee signing an acceptance of the permit.
- 4.3. A Communication Service Provider Facilities applicant must provide a complete written right-of-way permit application on a form prescribed by the Road Commission.
- 4.4. A right-of-way permit shall not convey equitable or legal title to the public right-of-ways. The right granted is only the right to occupy those portions of the public right-of-way to which the Road Commission has the right to grant access, for the purposes and the time period stated in the permit, and the right may not be subdivided or subleased. A right-of-way permit shall not grant a vested right for any Communication Service Provider Facilities to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the Road Commission and the facility therein removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public interest as determined by the Road Commission.

- 4.5. No reference herein, or in any right-of-way permit, shall be deemed to be a representation or guarantee by the Road Commission that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.

## **5. Taxes and Fees.**

- 5.1. To the full extent permitted by law, recovery of all Road Commission costs related to the issuance of a right-of-way permit or consent fee may be charged to a Communication Service Provider related to its installation and maintenance of Communication Service Provider Facilities in the right-of-way. Such permit or consent fee shall be in an amount sufficient to cover the actual administrative expenses incurred by the Road Commission that are directly related to receiving, reviewing and approving a right-of-way permit, to inspecting the actual construction of the permitted Facilities, and to implementation of the requirements of this Policy and the terms and conditions of the permit. On request of an operator, the Road Commission will submit proof of any charges or expenses incurred. For any project or time frame, an operator can also request a written estimate from the Road Commission, in advance, of costs planned to be expended by the Road Commission.