

SENATE BILL 1838

By Davis L

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 21, relative to the use of public roads or rights of way by communications services providers

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1: Tennessee Code Annotated, Title 65, Chapter 21, is Section 68-11-106(d)(3), is amended by inserting a new, appropriately numbered section, to read as follows:

SECTION 2: This act may be cited as the “Uniform Communications Rights of Way Act of 2001.

SECTION 3: Definitions. For the purposes of this act, the definitions of terms in Section 4 of this act shall apply. Provided, however, that the term “ordinance” as used in Section 7 shall include any ordinance, resolution or similar legislative action by a county or municipality.

SECTION 4: The provisions of this act shall not apply to “cable service” or “cable system” as defined in Tennessee Code Annotated section 7-59-201.

SECTION 5: No county or municipality shall require a communications services provider to enter into a franchise agreement or other similar contractual arrangement as a condition for installing or replacing communications facilities located within the public roads or rights of way of such counties or municipalities. Notwithstanding the foregoing, nothing in this act shall be construed as impairing any rights, privileges, obligations, claims, or defenses under

any such franchise agreement or other similar contractual arrangement existing and effective as of July 1, 2001.

SECTION 6: (1). Nothing in this act shall be construed as requiring any county or municipality to enact or adapt an ordinance, resolution or similar legislative action for the purpose of regulating the installation or replacement of communications facilities by communications services providers in public roads or rights or way. (2). Any county or municipal ordinance, resolution or similar legislative act regulating the installation or replacement of communications facilities by communications services providers in public roads or rights or way shall in all respects be in substance and form as set forth in Section 7 of this act.

SECTION 7:

**UNIFORM COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE (MUNICIPALITY/COUNTY), TENNESSEE, RELATING TO COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR TITLE; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR NOTICE OF TRANSFER, SALE OR ASSIGNMENT OF ASSETS IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR APPEALS; PROVIDING FOR INVOLUNTARY TERMINATION OF REGISTRATION; PROVIDING FOR EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR SECURITY FUND; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, federal and state law require the nondiscriminatory treatment of providers of communications services and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat communications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to telecommunications companies placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all communications companies and, notwithstanding any other law, may not require a telecommunications company to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way; and

**WHEREAS**, because of the unique circumstances applicable to providers of communications services and the fact that federal and state law require the nondiscriminatory treatment of providers of communications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other

law, may not require a provider of communications services, except as otherwise provided for providers of cable service, to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way; and

**WHEREAS**, it is the intent of the (Municipality/County) to exercise the (Municipality's/County's) authority over communications services providers' placement and maintenance of facilities in the public rights-of-way; and

**WHEREAS**, it is the (Municipality's/County's) intent to treat each communications services provider in a nondiscriminatory and competitively neutral manner in exercising such authority; and

**WHEREAS**, the public rights-of-way subject to the jurisdiction and control of the (Municipality/County): (1) are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; (2) are a unique and physically limited resource and proper management by the (Municipality/County) is necessary to maximize efficiency, minimize the costs to the taxpayers of the foregoing uses, and to minimize the inconvenience to and negative effects upon the public from such facilities' placement and maintenance in the public rights-of-way; and (3) are intended for public uses and must be managed and controlled consistently with that intent; and

**WHEREAS**, it is the intent of the (Municipality/County) to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law; and

**WHEREAS**, it is the intent of the (Municipality/County) that this Ordinance shall not apply to cable service providers.

NOW, THEREFORE, BE IT ORDAINED BY \_\_\_\_\_  
(MUNICIPALITY/COUNTY) \_\_\_\_\_, TENNESSEE AS FOLLOWS:

**Section 1 - Title**

This Ordinance shall be known and may be cited as the (Municipality/County) Communications Rights-of-Way Ordinance.

**Section 2 – Intent and Purpose**

It is the intent of the (Municipality/County) to promote the public health, safety and general welfare by: providing for the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the (Municipality/County); adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other Federal and State law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers; and minimizing disruption to the Public Rights-of-Way. In regulating its Public Rights-of-Way, the (Municipality/County) shall be governed by and shall comply with all applicable Federal and State laws.

**Section 3 – Definitions**

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

1. "Abandonment" shall mean the permanent cessation of all uses of a Communications Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in Public Rights-of-Way.

2. "(Municipality/County)" shall mean \_\_\_\_\_, Tennessee.

3. "Communications Services" shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this Ordinance "cable service", as defined in Section Tennessee Code Annotated §7-59-201, as it may be amended, is not included in the definition of "Communications Services," and cable service providers may be subject to other ordinances of the (Municipality/County).

4. "Communications Services Provider" shall mean any Person including a municipality or county providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-Way. "Communications Services Provider" shall also include any Person including a municipality or county that places or maintains a Communications Facility in Public Rights-of-Way but does not provide Communications Services.

5. "Communications Facility" or "Facility" or "System" shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes,

vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the Public Rights-of-Way of the (Municipality/County) and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communications Services.

6. "FCC" shall mean the Federal Communications Commission.

7. "In Public Rights-of-Way" or "in the Public Rights-of-Way" shall mean in, on, over, under or across the Public Rights-of-Way.

8. "Ordinance" shall mean this Ordinance.

9. "Person" shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the (Municipality/County) to the extent the (Municipality/County) acts as a Communications Services Provider.

10. "Place or maintain" or "placement or maintenance" or "placing or maintaining" shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A Communications Services Provider that owns or exercises physical control over Communications Facilities in Public Rights-of-Way, such as the physical control to maintain and repair, is "placing or maintaining" the Facilities. A Person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way does not constitute "placing or maintaining" Facilities in the Public Rights-of-Way.

11. "Public Rights-of-Way" shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the (Municipality/County) is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public Rights-of-Way" shall not include private property. "Public Rights-of-Way" shall not include any real or personal (Municipality/County) property except as described above and shall not include (Municipality/County) buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

12. "Registrant" shall mean a Communications Services Provider that has Registered with the (Municipality/County) in accordance with the provisions of this Ordinance.

13. "Registration" or "Register" shall mean the process described in this Ordinance whereby a Communications Services Provider provides certain information to the (Municipality/County).

**Section 4 - Registration for Placing or Maintaining Communications Facilities in Public Rights-of-Way**

1. A Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the (Municipality/County) shall first Register with the (Municipality/County) in accordance with this Ordinance. Subject to the terms and conditions prescribed in this Ordinance, a Registrant may place or maintain a Communications Facility in Public Rights-of-Way.

2. A Registration shall not convey any title, equitable or legal, to the Registrant in the Public Rights-of-Way. Registration under this Ordinance governs only the placement or maintenance of Communications Facilities in Public Rights-of-Way. Other ordinances, codes or

regulations may apply to the placement or maintenance in the Public Rights-of-Way of facilities that are not Communications Facilities. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on the (Municipality's/County's) or another Person's facilities. Registration does not excuse a Communications Services Provider from complying with all applicable (Municipality/County) ordinances, codes or regulations, including this Ordinance.

3. Each Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the (Municipality/County) shall file a single Registration with the (Municipality or County) which shall include the following information:

- (a) name of the applicant;
- (b) name, address and telephone number of the applicant's primary contact person in connection with the Registration, and the person to contact in case of an emergency;
- (c) whether applicant provides local service or toll service or both;
- (d) evidence of the insurance coverage required under this Ordinance and acknowledgment that Registrant has received and reviewed a copy of this Ordinance, which acknowledgment shall not be deemed an agreement; and
- (e) the number of the applicant's certificate of authorization or license to provide Communications Services issued by the Tennessee Regulatory Authority, the Federal Communications Commission, or other Federal or State authority, and evidence of authority to do business in the State of Tennessee issued by the Secretary of State, if any.

4. Registration Application Fees.

Each applicant for a Registration shall be required to submit a registration application fee with the application, which shall not be refunded if the application is withdrawn in an amount established by Resolution (of the Municipal or County Commission) not to exceed the

(Municipality's/County's) costs and expenses incurred in connection with reviewing and approving the Registration. If the registration application fee is insufficient to cover all costs or expenses incurred by the (Municipality/County) in connection with review and approval of the Registration, the applicant shall reimburse the (Municipality/County) for any such costs and expenses in excess of the registration application fee following receipt of written notice, which shall explain any additional costs or expenses.

5. The (Municipality/County) shall review the information submitted by the applicant. Such review shall be by the (Designated Municipal/County Official) or his or her designee. If the applicant submits information in accordance with subsection 3. above, the Registration shall be effective and the (Municipality/County) shall notify the applicant of the effectiveness of Registration in writing. If the (Municipality/County) determines that the information has not been submitted in accordance with subsection 3. above, the (Municipality/County) shall notify the applicant of the non-effectiveness of Registration, and reasons for the non-effectiveness, in writing. The (Municipality/County) shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Non-effectiveness of Registration shall not preclude an applicant from filing subsequent applications for Registration under the provisions of this Section.

6. A Registrant may cancel a Registration upon written notice to the (Municipality/County) stating that it will no longer place or maintain any Communications Facilities in Public Rights-of-Way within the (Municipality/County) and will no longer need to obtain permits to perform work in Public Rights-of-Way. A Registrant cannot cancel a Registration if the Registrant continues to place or maintain any Communications Facilities in Public Rights-of-Way.

7. Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a Communications Facility in Public Rights-of-Way within the (Municipality/County) but shall establish for the Registrant a right to apply for a permit, if permitting is required by the (Municipality/County). Registrations are expressly

subject to any future amendment to or replacement of this Ordinance and further subject to any additional (Municipal/County) ordinances, as well as any State or Federal laws that may be enacted.

8. A Registrant shall renew its Registration with the (Municipality/County) by April 1 of even numbered years in accordance with the Registration requirements in this Ordinance, except that a Registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection 3, a Registrant shall provide updated information to the (Municipality/County). If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the (Municipality/County) restricting the issuance of additional permits until the Communications Services Provider has complied with the Registration requirements of this Ordinance.

9. In accordance with applicable (Municipality/County) ordinances, codes or regulations, a permit may be required of a Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way. An effective Registration shall be a condition of obtaining a permit. Notwithstanding an effective Registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a Registrant having an effective Registration if all permitting requirements are met.

#### **Section 5 - Notice of Transfer, Sale or Assignment of Assets in Public Rights-of-Way**

If a Registrant transfers, sells or assigns its assets located in Public Rights-of-Way incident to a transfer, sale or assignment of the Registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided by such Registrant to the

(Municipality/County) within twenty (20) days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current Registrant, then the transferee, buyer or assignee is not required to re-Register. If the transferee, buyer or assignee is not a current Registrant, then the transferee, buyer or assignee shall Register as provided in Section 4 within sixty (60) days of the transfer, sale or assignment.

If building permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify (the Public Works Department or other appropriate office) that the transferee, buyer or assignee is the new applicant].

**Section 6 – Placement or Maintenance of a Communications Facility in Public Rights-of-Way**

1. A Registrant shall at all times comply with and abide by all applicable provisions of the State and Federal law and (Municipal/County) ordinances, codes and regulations in placing or maintaining a Communications Facility in Public Rights-of-Way.

2. A Registrant shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits, if any, have been issued by the (Municipality/County) or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the (Municipality/County) of the placement or maintenance of a Communications Facility in Public Rights-of-Way in the event of an emergency. Registrant acknowledges that as a condition of granting such permits, the (Municipality/County) may impose reasonable rules or regulations governing the placement or maintenance of a Communications Facility in Public Rights-of-Way. Permits shall apply only to the areas of

Public Rights-of-Way specifically identified in the permit. The (Municipality/County) may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits.

3. As part of any permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way, the Registrant shall provide the following:

(a) The location of the proposed Facilities, including a description of the Facilities to be installed, where the Facilities are to be located, and the approximate size of Facilities that will be located in Public Rights-of-Way;

(b) A description of the manner in which the Facility will be installed (i.e. anticipated construction methods or techniques);

(c) A maintenance of traffic plan for any disruption of the Public Rights-of-Way;

(d) Information on the ability of the Public Rights-of-Way to accommodate the proposed Facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons);

(e) An estimate of the cost of restoration to the Public Rights-of-Way;

(f) The timetable for construction of the project or each phase thereof, and the areas of the (Municipality/County) which will be affected, and

(g) A permit fee.

4. All Communications Facilities shall be placed or maintained so as not to unreasonably interfere with the use of the Public Rights-of-Way by the public and with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way. The use of trenchless technology (i.e., directional bore method) for the installation of Facilities in the Public Rights-of-Way as well as joint trenching or the co-location of facilities in existing conduit should

be employed wherever feasible. The (Appropriate Municipal/County Official) may promulgate reasonable rules and regulations concerning the placement or maintenance of a Communications Facility in Public Rights-of-Way consistent with this Ordinance and other applicable law.

5. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Communications Facilities.

6. After the completion of any placement or maintenance of a Communications Facility in Public Rights-of-Way or each phase thereof, a Registrant shall, at its own expense, restore the Public Rights-of-Way to its original condition before such work. If the Registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the (Municipality/County) may perform restoration and charge the costs of the restoration against the Registrant. For twelve (12) months following the original completion of the work, the Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Ordinance at its own expense.

7. A permit from the (Municipality/County) constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way.

8. A Registrant shall maintain its Communications Facility in Public Rights-of-Way in a manner consistent with accepted industry practice and applicable law.

9. Registrant shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

10. Upon request of the (Municipality/County), and as notified by the (Municipality/County) of the other work, construction, installation or repairs referenced below, a Registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights-of-Way, and Registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the Public Rights-of-Way.

11. A Registrant shall not place or maintain its Communications Facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the (Municipality/County) or any other Person's facilities lawfully occupying the Public Rights-of-Way of the (Municipality/County).

12. (Municipality/County) makes no warranties or representations regarding the fitness, suitability, or availability of (Municipality's/County's) Public Rights-of-Way for the Registrant's Communications Facilities and any performance of work, costs incurred or services provided by Registrant shall be at Registrant's sole risk. Nothing in this Ordinance shall affect the (Municipality's/County's) authority to add, vacate or abandon Public Rights-of-Way, and (Municipality/County) makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-Way for Communications Facilities.

13. The (Municipality/County) shall have the right to make such inspections of Communications Facilities placed or maintained in Public Rights-of-Way as it finds necessary to ensure compliance with this Ordinance.

14. A permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way shall include plans showing the location of the proposed installation of Facilities in the Public Rights-of-Way. If the plans so provided require revision based upon actual installation, the Registrant shall promptly provide revised plans. The plans

shall be in a hard copy format or an electronic format specified by the (Municipality/County), provided such electronic format is maintained by the Registrant. Such plans in a format maintained by the Registrant shall be provided at no cost to the (Municipality/County).

15. The (Municipality/County) reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the (Municipality/County) in Public Rights-of-Way occupied by the Registrant.

16. A Registrant shall, on the request of any Person holding a permit issued by the (Municipality/County), temporarily raise or lower its Communications Facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Registrant shall have the authority to require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.

17. A wireless facility that is a portion of a Communication Facility, such as an antenna (“Wireless Facility(ies)”), which is attached to a legally maintained vertical structure in the Public Rights-of-Way, such as a light pole or utility pole (“Vertical Structure(s)”), shall be subject to the following criteria:

(a) such Wireless Facilities may not extend more than 20 feet above the highest point of the Vertical Structure;

(b) such Wireless Facilities that are attached to a Vertical Structure located in Public Rights-of-Way that is fifteen feet or less in width and is located adjacent to real property used as a single family residence shall be flush mounted to the Vertical Structure;

(c) such Wireless Facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;

(d) such Wireless Facilities shall comply with any applicable Federal Communications Commission Emissions Standards;

(e) the design, construction, and installation of such Wireless Facilities shall comply with any applicable local building codes;

(f) no commercial advertising shall be allowed on such Wireless Facilities; and

(g) any accessory equipment and related housing in the Public Rights-of-Way that are used in conjunction with such a Wireless Facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment.

Vertical structures, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the Public Rights-of-Way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such Public Rights-of-Way are located or to which they are adjacent.

### **Section 7 - Suspension of Permits**

The (Municipality/County) may suspend a permit for work in the Public Rights-of-Way subject to Section 8 of this Ordinance for one or more of the following reasons:

1. violation of permit conditions, including conditions set forth in the permit, this Ordinance or other applicable (Municipal/County) ordinances, codes or regulations governing placement or maintenance of Communications Facilities in Public Rights-of-Way;

2. misrepresentation or fraud by Registrant in a Registration or permit application to the (Municipality/County); or

3. failure to properly renew or ineffectiveness of Registration.

4. failure to relocate or remove Facilities as may be lawfully required by the (Municipality/County).]

The (Appropriate Municipal/County Official) shall provide notice and an opportunity to cure any violation of 1. through 4. above, each of which shall be reasonable under the circumstances.

### **Section 8 – Appeals**

Final, written decisions of the (Designated Municipal/County Official) or his or her designee suspending or denying a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. An appeal must be filed with the (Designated Municipal/County Official) within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The (Municipality/County) shall (hear or appoint a hearing officer to consider) the appeal as set forth in (the designated Municipal/County ordinances). The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the Registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

### **Section 9 – Involuntary Termination of Registration**

1. The (Municipality/County) may terminate a Registration if:
  - (a) a Federal or State authority suspends, denies, or revokes a Registrant's certification or license to provide Communications Services;
  - (b) the Registrant's placement or maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public

Rights-of-Way and the Registrant fails to remedy the danger promptly after receipt of written notice; or

(c) the Registrant ceases to use all of its Communications Facilities in Public Rights-of-Way and has not complied with Section 16 of this Ordinance.

2. Prior to termination, the Registrant shall be notified by the (Appropriate Municipal/County Official) with a written notice setting forth all matters pertinent to the proposed termination action, including which of (a) through (c) above is applicable as the reason therefore, and describing the proposed action of the (Municipality/County) with respect thereto. The Registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the (Appropriate Municipal/County Official), to accomplish the same. If the plan is rejected, the (Appropriate Municipal/County Official) shall provide written notice of such rejection to the Registrant and shall make a recommendation to the (Municipal/County Commission/Council) regarding a decision as to termination of Registration. A decision by a (Municipality/County) to terminate a Registration may only be accomplished by an action of the (Municipal/County Commission/Council). A Registrant shall be notified by written notice of any decision by the (Municipal/County Commission/Council) to terminate its Registration. Such written notice shall be sent within seven (7) days after the decision.

3. In the event of termination, the former Registrant shall: (a) notify the (Municipality/County) of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in Public Rights-of-Way; or (b) provide the (Municipality/County) with an acceptable plan for disposition of its Communications Facilities in Public Rights-of-Way. If a Registrant fails to comply with this subsection 3., which

determination of non-compliance is subject to appeal as provided in Section 8 the (Municipality/County) may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the Facilities where another Person has not assumed the ownership or physical control of the Facilities or requiring the Registrant within 90 days of the termination, or such longer period as may be agreed to by the Registrant, to remove some or all of the Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its original condition before the removal.

4. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way of the (Municipality/County).

5. In the event of termination of a Registration, this Section does not authorize the (Municipality/County) to cause the removal of Communications Facilities used to provide another service for which the Registrant or another Person who owns or exercises physical control over the Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service, and is Registered with the (Municipality/County), if required.

**Section 10 – Existing Communications Facilities in Public Rights-of-Way**

A Communications Services Provider with an existing Communications Facility in the Public Rights-of-Way of the (Municipality/County) has one hundred eighty (180) days from the Effective Date of this Ordinance to comply with the terms of this Ordinance, including, but not limited to, Registration, or be in violation thereof.

## **Section 11 – Insurance**

1. A Registrant shall provide, pay for and maintain satisfactory to the (Municipality/County) the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Tennessee and having a rating reasonably acceptable to the (Municipality/County). All liability policies shall provide that the (Municipality/County) is an additional insured as to the activities under this Ordinance. The required coverages must be evidenced by properly executed Certificates of Insurance forms. The Certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the (Municipality/County) annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the (Municipality/County) must be given to the (Municipality/County) of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the (Municipality/County).

2. The limits of coverage of insurance required shall be not less than the following:

- (a) Worker's Compensation and Employer's Liability Insurance  
Employer's Liability - \$1,000,000.00 limit each accident
- (b) Comprehensive General Liability  
Bodily injury and property damage-  
\$ 2,000,000.00 combined single limit each occurrence
- (c) Automobile Liability  
Bodily injury and property damage-  
\$1,000,000.00 combined single limit each accident

## **Section 12 – Indemnification**

1. A Registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the (Municipality/County), its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the (Municipality/County) arising out of the placement or maintenance of its Communications System or Facilities in Public Rights-of-Way, regardless

of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided, however, that a Registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the (Municipality/County). This provision includes, but is not limited to, the (Municipality's/County's) reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. (Municipality/County) agrees to notify the Registrant, in writing, within a reasonable time of (Municipality/County) receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the (Municipality/County) from participating in the defense of any litigation by its own counsel and at its own cost if in the (Municipality's/County's) reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the laws of the State of Tennessee; or (b) as a waiver of sovereign immunity.

2. The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

### **Section 13 – Construction Bond**

1. Prior to issuing a permit where the work under the permit will require restoration of Public Rights-of-Way, a (Municipality/County) may require a construction bond to secure the restoration of the Public Rights-of-Way. Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the Security Fund as provided in Section 14.

2. The rights reserved by the (Municipality/County) with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the (Municipality/County) may have under this Ordinance, or at law or equity.

3. The rights reserved to the (Municipality/County) under this Section are in addition to all other rights of the (Municipality/County), whether reserved in this Ordinance, or

authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the (Municipality/County) may have.

#### **Section 14 – Security Fund**

At or prior to the time a Registrant receives its first permit to place or maintain a Communications Facility in Public Rights-of-Way after the effective date of this Ordinance, the Registrant may be required to file with the (Municipality/County), for (Municipality/County) approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of (\$50,000.00) having as a surety a company qualified to do business in the State of Tennessee, and acceptable to the (Appropriate Municipal/County Official), which shall be referred to as the "Security Fund." The Security Fund shall be maintained from such time through the earlier of: 1. transfer, sale, assignment or removal of all Communications Facilities in Public Rights-of-Way; or 2. twelve (12) months after the termination or cancellation of any Registration. The Security Fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon Registrant by the provisions of this Ordinance. The Security Fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this Ordinance, subject to Section 15 of this Ordinance, there shall be recoverable, jointly and severally from the principal and surety of the Security Fund, any damages or loss suffered by the (Municipality/County) as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any Facilities of the Registrant in Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund. Notwithstanding the foregoing, the (Municipality/County) may in its discretion not require a Security Fund or may accept a corporate guarantee of the Registrant or its parent company.

### **Section 15 – Enforcement Remedies**

1. A Registrant's failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Registrant to the code enforcement provisions and procedures as provided in (refer to the applicable Municipal/County Code provision on code enforcement).

2. Failure of the (Municipality/County) to enforce any requirements of this Ordinance shall not constitute a waiver of the (Municipality's/County's) right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

### **Section 16 – Abandonment of a Communications Facility**

1. Upon Abandonment of a Communications Facility owned by a Registrant in Public Rights-of-Way, the Registrant shall notify the (Municipality/County) within ninety (90) days.

2. The (Municipality/County) may direct the Registrant by written notice to remove all or any portion of such Abandoned Facility at the Registrant's sole expense if the (Municipality/County) determines that the Abandoned Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Facility: (a) compromises safety at any time for any Public Rights-of-Way user or during construction or maintenance in Public Rights-of-Way; (b) prevents another Person from locating facilities in the area of Public Rights-of-Way where the Abandoned Facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the Public Rights-of-Way's use. In the event of (b), the

(Municipality/County) may require the third Person to coordinate with the Registrant that owns the existing Facility for joint removal and placement, where agreed to by the Registrant.

3. In the event that the (Municipality/County) does not direct the removal of the Abandoned Facility, the Registrant, by its notice of Abandonment to the (Municipality/County), shall be deemed to consent to the alteration or removal of all or any portion of the Facility by the (Municipality/County) or another Person at such third party's cost.

4. If the Registrant fails to remove all or any portion of an Abandoned Facility as directed by the (Municipality/County) within a reasonable time period as may be required by the (Municipality/County) under the circumstances, the (Municipality/County) may perform such removal and charge the cost of the removal against the Registrant.

### **Section 17 – Force Majeure**

In the event a Registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Registrant's control, and thus not falling within this Section, shall include, without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

**Section 18 – Reservation of Rights and Remedies**

1. This Ordinance shall be applicable to all Communications Facilities placed in the Public Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities in the Public Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by State and Federal law.

2. The adoption of this Ordinance is not intended to affect any rights or defenses of the (Municipality/County) or a Communications Service Provider under any existing franchise, license or other agreements with a Communications Services Provider.

3. Nothing in this Ordinance shall affect the remedies the (Municipality/County) or the Registrant has available under applicable law.

4. Any Person who uses the Communications Facilities of a Registrant, other than the Registrant that owns the Facilities, shall not be entitled to any rights to place or maintain such Facilities in excess of the rights of the Registrant that places or maintains the Facilities.

**Section 19 – Severability**

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8: This act shall take effect July 1, 2001, the public welfare requiring it.