



## Text File

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**Committee:** Committee on Public Works

**Status:** Passed Finally

Ordinance amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications, Chapter 427 - Telecommunications in the Public Rights-Of-Way; by amending language to Sections 427.01 through 427.18.

WHEREAS, the duties of managing and maintaining telecommunications users of the public rights-of-way were originally vested in the Department of City Information Services, and said Department is now the Department of Innovation and Performance; and

WHEREAS, the Department of Public Works will now assume the duties of managing and maintaining telecommunications users of the public rights-of-way; and

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the "1996 Act"), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Pittsburgh City Code establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower

or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the “FCC”) to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the “Report and Order” or “Order”) clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC’s review processes under the National Environmental Policy Act of 1969 (“NEPA”) and section 106 of the National Historic Preservation Act of 1966 (“NHPA”), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 - PRACTICE AND PROCEDURE) by adding new Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station (“Eligible Facility Request Rules”); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60 shot clock and tolling provisions, establishes a deemed-approved remedy for applications not timely

responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective 90 days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the Eligible Facility Request Rules; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order bring the City's development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

**The Council of the City of Pittsburgh hereby enacts as follows:**

**Section 1.** Amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications, Chapter 427 - Telecommunications in the Public Rights-Of-Way; by amending language to Sections 427.01 through 427.18 as follows:

**CHAPTER 427: - TELECOMMUNICATIONS SYSTEMS IN THE PUBLIC RIGHTS-OF-WAY**

**§ 427.01 [~~LICENSE~~] RIGHTS OF WAY ("ROW") USE AGREEMENT REQUIREMENT.**

No person shall construct, operate or continue to operate a telecommunications system which occupies the streets, public ways and public places within the City without having been issued a [~~license~~] ROW Use Agreement or licenses by the Director of the [~~City Information Systems~~] Department of Public Works.

**§ 427.02 - PURPOSE.**

The purpose of this Chapter is to:

- (a) Regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of a telecommunications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways or public places within the corporate limits of the City, as

now or in the future may exist; and

- (b) Provide the City with appropriate fair, reasonable, competitively neutral and nondiscriminatory consideration for occupation and use of the City's rights-of-way for telecommunications systems; and
- (c) Provide the City with appropriate consideration for acquisition and maintenance of the City's rights-of-way when used for commercial purposes; and
- (d) Provide the City with appropriate consideration for the cost and anticipated costs of regulation imposed by this Chapter on a telecommunications system.

§ 427.03 - DEFINITIONS.

- (a) For the purposes of this Chapter and any [~~license~~] ROW Use Agreement in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this Chapter, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of Council.

(1) ANTENNA: Any apparatus designed for telephonic, data, radio, or television communications through the sending and/or receiving of electromagnetic waves.

(2) APPROVAL AUTHORITY: The Director of the Department of Public Works, or his or her designee, who has authority under Chapters 412 - Users of the Public Rights-Of-Way, and 427 - Telecommunications Systems in the Public Rights-Of-Way, of the City of Pittsburgh Code to administratively issue project permit approvals or enter into ROW Use Agreements on behalf of the interests of the City.

(3) APPLICANT: The person, and such person's successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.

(4) AUTHORIZED PERSON: The person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the City regarding the application.

(5) BASE STATION: The structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this Chapter, supports or houses equipment described in paragraphs (i) - (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (i) - (ii) above.

(6)CABLE COMMUNICATIONS SYSTEM: A nonbroadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is designed to distribute to Subscribers the signals of one (1) or more television broadcast stations and is franchised by the City in accordance with Chapter 425 of the Pittsburgh Code of Ordinances.

(7)CBD: Central Business District, specifically that portion of the City of Pittsburgh bordered by the Allegheny River on the north, the Monongahela River on the south, Interstate 579, Bigelow Boulevard, Crawford Street, Fifth Avenue and the Liberty Bridge on the east, and the Ohio River on the west; or as otherwise defined by the Department of City Planning of the City.

(8)CITY: City of Pittsburgh, a home-rule charter municipality of the second class, situated in the County of Allegheny, in the Commonwealth of Pennsylvania.

(9) CO-LOCATION: The mounting or installation of one or more Wireless Communications Facilities as defined herein, including but not limited to, transmission equipment and / or antenna, on an existing tower, utility pole, light pole, and / or any eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(10) CONCEAL or CONCEALMENT: Eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station, including but not limited to Alternative Antenna Support Structures as defined in Chapter 926 (5.1).

(11) CUSTOMER: A person who for a charge or payment of a fee receives, sends or uses any signal or service provided, collected or distributed by a telecommunications system duly authorized by the City.

(12) DISTRIBUTED ANTENNA SYSTEMS (DAS): Network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.

(13) DIRECTOR: The Director of the Department of Public Works.

(14) EMERGENCY: A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.

(15) ELIGIBLE SUPPORT STRUCTURE: Any existing tower or base station as defined in this Chapter, provided that it is in existence at the time the eligible facilities modification application is filed with the City under the Zoning Code, Chapter 901, et seq.

(16) EXISTING: For purpose of this Chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another Commonwealth, county or local regulatory review process; provided that, a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(17) FCC: The United States Federal Communications Commission or its legally appointed successor.

~~[(6) LICENSE. The privilege granted by the City by which the City authorizes a person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a private communications system that occupies the streets, public ways or public places within the City. Any license issued in accordance herewith shall be a nonexclusive license.]~~

~~[(7) LICENSEE. The person or its legal successor in interest who is issued a license or licenses in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a telecommunications system in the City. ]~~

(18) LICENSE. For purposes of this Chapter 427, a license is a non-exclusive, personal privilege or permission with respect to some use of land, in particular rights-of-way, and is revocable at the will of the City. The privilege herein attaches only to the party holding it and not to the land itself because a license does not represent an estate or interest in the land.

(19) LOCAL ACCESS TRANSPORT AREA (LATA): The geographic area in which the City is located and in which Verizon Communications and any other telecommunications companies are authorized by the Commonwealth of Pennsylvania Public Utilities Commission to provide local exchange access telecommunications services.

(20) MONOPOLE: A Wireless Communication Facility or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connecting appurtenances.

- (21) NON-TOWER WIRELESS COMMUNICATIONS FACILITY (Non-Tower WCF): All non-tower wireless communications facilities, including but not limited to, antennae and related equipment. Non-Tower WCF shall not include support structures for antennae and related equipment.
- (22) PUBLIC WAY(S). The surface, the air above the surface, and the area below the surface within any public right-of-way and any street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, lane, square, viaduct, waterway or other public right-of-way including public utility easements or rights-of-way in which the City has jurisdiction; and any other public ground or water within belonging to the City.
- (23) RIGHTS-OF-WAY (ROW): The surface and space above and below any real property in which the City has an interest in law or equity, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, or real property, other than real property owned in fee by the City.
- (24) ROW USE AGREEMENT: The privilege granted by the City by which the City authorizes a Person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a private communications system that occupies the Rights-Of-Way, streets, Public Ways or public places within the City. Any ROW Use Agreement issued in accordance herewith shall be a nonexclusive license.
- (25) ROW USER: The Person or its legal successor in interest who is issued a ROW Use Agreement or licenses in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a telecommunications system in the City.
- (26) SITE: The current boundaries of the leased, licensed or owned property surrounding a tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (27) SMALL CELL FACILITY: A personal wireless services facility that meets both of the following qualifications:
- (i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
  - (ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

- (28) SMALL CELL NETWORK: A collection of interrelated small cell facilities designed to deliver personal wireless services.
- (29) STEALTH TECHNOLOGY: Camouflaging and concealment methods applied to wireless communications towers, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
- (30) STREET: Any area established for vehicular or public access use or the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public purposes. Street includes, but is not limited to, highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parks, parkways, waterways, docks, overheads, wharves and piers.
- (31) TELECOMMUNICATIONS SYSTEM: Any communications equipment or facilities, not part of the LATA or part of a cable communications system franchised by the City, that in any manner is connected with the streets, public ways or public places within the corporate limits of the City, as now or in the future may exist.
- (32) TOTAL LOCAL GROSS REVENUES: All cash, credits or property of any kind or nature reported as revenue items on [licensee] ROW User's audited income statements arising from or attributable to the sale or exchange of telecommunications services by the [licensee] ROW User within the City or in any way derived from the operation of its telecommunications system, including, but not limited to, any interconnection between its system in the City and any system whatsoever. This sum shall be the basis for computing the fee imposed pursuant to this Chapter. The sum shall not include any bad debts, deposits, promotional or vendor discounts or credits nor sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal service charges and are remitted by the [licensee] ROW User directly to the taxing authority.
- (33) TOWER: Any structure built for the sole or primary purpose of supporting any antennas, including but not limited to, self-supporting lattice towers, guy towers, or monopole towers and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
- (34) TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF): A Tower and its supporting antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. DAS hub facilities are considered to be Tower-Based WCFs



(35) TRANSMISSION EQUIPMENT: Equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. As used throughout this Chapter, the term is excluded from the definition of Equipment.

(36) WIRELESS: transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

(37) WIRELESS COMMUNICATIONS FACILITY (WCF): The antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services.

(38) WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT): any Person that applies for a Wireless Communication Facility building permit, zoning approval and/or permission to use the public ROW or other City owned land or property.

#### § 427.04 - SERVICE OF NOTICE.

All notices required to be given to the City under any provision of this Chapter shall be deemed served when delivered either by mail via the United States Postal Service or by hand in writing to the Director of the [~~City Information Systems~~] Department of Public Works, or his/her designee during normal business hours.

#### § 427.05 - NO LIABILITY OR WARRANTY.

This Chapter shall not be construed to create or hold the City responsible or liable for any damage to persons or property by reason of any inspection or reinspection authorized herein or failure to inspect or reinspect, nor shall the issuance of any [~~license~~] ROW Use Agreement nor the approval or disapproval of any installation authorized herein constitute any representation, guarantee or warranty of any kind by, nor create any liability upon, the City or any official, agent or employee thereof.

#### § 427.06 - LENGTH OF [~~LICENSE~~] ROW USE AGREEMENT.

(a) Any annual [~~license~~] ROW Use Agreement issued by the City in accordance herewith shall be a nonexclusive license for the use of the streets, public ways or public places within the City as specified in the [~~license~~] ROW Use Agreement for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a telecommunications system.

(b) Any [~~license~~] ROW Use Agreement issued by the City may be renewable annually upon establishment by the [~~licensee~~] ROW User to the satisfaction of the City that the [~~licensee~~] ROW User is in compliance with this Chapter, all applicable federal, state and local ordinances and regulations and the space occupied

is not needed for a public purpose.

§ 427.07 - ~~[LICENSE]~~ ROW USE AGREEMENT LOCATIONS.

- (a) Any ~~[license]~~ ROW Use Agreement issued for a telecommunications system in accordance herewith shall apply only to the location or locations stated on the ~~[license]~~ ROW Use Agreement or licenses.
- (b) Nothing in this Chapter shall be construed as a representation, promise or guarantee by the City that any permit or other authorization required under any City law for the construction or installation of a telecommunications system shall be issued.
- (c) Co-location.
- (1) An application for a new Tower-Based WCF shall not be approved unless the City finds that the wireless communications equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building. Any applicant proposing construction of a new Tower-Based WCF outside the Rights-Of-Way shall demonstrate to the satisfaction of the Director of the Department of Public Works, by written submission, that a good faith effort has been made to obtain permission to mount the Tower-Based WCF antenna on an existing building or structure. A good faith effort shall require that all owners of potentially suitable structures within a one-quarter (1/4) mile radius of the proposed Tower-Based WCF site be contacted and that the applicant certifies in writing to the appropriate Approval Authority, and / or Zoning Administrator, and / or Council, and / or their designee that one (1) or more of the following reasons for not selecting such structure apply:
- (i) The proposed WCF and related equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at reasonable cost;
- (ii) The proposed WCF and related equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at reasonable cost;
- (iii) Such existing structure does not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function; and/or
- (iv) A commercially reasonable agreement cannot be reached with the owner(s) of such structure. For purposes of this paragraph, commercially reasonable means terms and pricing that are reasonably consistent with similar wireless facility leases and agreements within a fifty (50) mile radius of the City.

§ 427.08 - TECHNICAL STANDARDS.

All technical standards governing construction, reconstruction, installation, operation, testing, use,

maintenance and dismantling of a telecommunications system provided for herein shall be in accordance with all applicable FCC and other federal, state and local laws and regulations, including but not limited to, the most recent editions of the National Electrical Code and the National Electrical Safety Code.

§ 427.09 - POWERS AND DUTIES OF DIRECTOR.

The Director of the ~~[City Information Systems]~~ Department of Public Works or his/her designee shall have the following powers and duties:

- (a) Receive and review applications for ~~[license]~~ ROW Use Agreements for any telecommunications system;
- (b) Review and audit all reports and filings submitted by the ~~[licensee]~~ ROW User to the City pursuant to this Chapter; ~~[and ]~~
- (c) ~~[Submit]~~ Establish regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing or use of any telecommunications system established by ~~[license]~~ a ROW Use Agreement. ~~[in accordance herewith to the Director of City Information Systems for promulgation];~~
- (d) Establish fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for Right Of Way Use Agreements for the use of Public Ways and / or Rights-Of-Way on a nondiscriminatory basis consistent with and pursuant to 47 U.S.C.A. § 253 (c) (June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.), or as hereinafter amended;
- (e) Subject to City Council approval, establish fees for permits, registration and other administrative fees relating to telecommunications providers herein or throughout the Pittsburgh Code of Ordinances; and,
- (f) Verify zoning compliance with the Department of City Planning.

§ 427.10 - BONDS.

- (a) All persons submitting a request for a ~~[license]~~ ROW Use Agreement or a renewal thereof to construct or maintain a telecommunications system in accordance herewith shall file with their request bonds solely for the protection of the City with a surety company or trust company or companies as surety or sureties in an amount determined by the Director of ~~[City Information Systems]~~ Department of Public Works in a form and amount that is acceptable to the City Solicitor, to protect the City from any and all damages or costs suffered or incurred by the City as a result thereof, including, but not limited to, attorney's fees and costs of any action or proceeding, and including the full amount of compensation, indemnification, cost of removal or abandonment of any property or other costs which may be in default, up to the full principal amount of the bond; and the condition shall be a continuing obligation during the entire term of any [

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license] ROW Use Agreement issued in accordance herewith and thereafter until the licensee] ROW User shall have satisfied in full any and all obligations to the City which arise out of or pertain to the license] ROW Use Agreement for a telecommunications system.

- (b) None of the provisions of this section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder shall be construed to excuse the faithful performance by or limit the liability of the licensee] ROW User under this Chapter or any license] ROW Use Agreement issued in accordance herewith or for damages either to the full amount of the bond or otherwise.

§ 427.11 - CONSIDERATION FOR LICENSE] ROW USE AGREEMENT.

It shall be a term and condition of any license] ROW Use Agreement issued in accordance herewith that as a part of the consideration supporting the issuance of such license] ROW Use Agreement and the City's permission thereby to occupy and use the streets of the City, that the licensee] ROW User shall pay each year to the City the following charges and license] ROW Use Agreement fees.

- (a) The fees for telecommunications shall be established by the Director of Public Works, subject to approval by City Council, based on fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of Public Ways and / or Rights-Of-Way on a nondiscriminatory basis consistent with and pursuant to 47 U.S.C.A. § 253 (c) (June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.), or as hereinafter amended. In particular, any telecommunications system which serves no customers other than itself shall pay charges and license] ROW Use Agreement fees as follows:
- (1) [One dollar and ninety cents (\$1.90)] Two dollars (\$2.00) per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire situated outside of the "CBD" and thereafter, said fee is to increase annually by two percent (2%) rounded up to the nearest cent.
  - (2) Two dollars and [twenty five cents (\$2.25)] fifty cents (\$2.50) per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire situated inside of the "CBD" and thereafter, said fee is to increase annually by two percent (2%) rounded up to the nearest cent.
  - (3) In no event shall the fee be less than five hundred fifty dollars (\$550.00) per annum.
- (b) Any telecommunications system that serves customers within the City shall pay annually, five (5) percent of the annual Total Local Gross Revenues derived from the customers.
- (c) Any cable communications system or part thereof located in the City right-of-way and not franchised by the City in accordance with Chapter 425 shall obtain a license] ROW Use Agreement under this Chapter. The license] ROW Use Agreement shall be granted for the sole purpose of providing cable television signals to customers located in an adjoining municipality. The charges and license] ROW Use Agreement fees stated in subsection (a) hereof shall not apply provided that such adjoining municipality imposes no compensation and license] franchise fee requirements on any cable communications system or part thereof, franchised by the City in accordance with Chapter 425 which

may be located in the adjoining municipality.

~~[(d) Commencing January 1, 1998, and annually thereafter, the license charge shall be calculated by multiplying the previous year's license fee by the percentage change from the previous year in the National Consumer Price Index ("Index"), published by the United State Department of Labor. In the event that such Index ceases to be published, the Director of City Information Systems may select another measure of general price changes in the United States. By December 1, 1997, and each December 1 thereafter, the Department of City Information Systems shall notify each Licensee of the revised license charges to be effective on the following January 1. Every license agreement shall reflect the schedule of charges specified herein and the annual adjustments thereto.]~~

§ 427.12 - PAYMENT AND AUDIT OF COMPENSATION AND ~~[LICENSE]~~ ROW USE AGREEMENT FEES.

- (a) The annual charges and ~~[license]~~ ROW Use Agreement fees provided for in § 427.11(a) shall be payable annually on or before February 1 of each calendar year and shall be accompanied by a statement of linear footage attributable to the ROW User containing a notarized verification by the chief financial officer of the ROW User.
- (b) The annual charges and ~~[license]~~ ROW Use Agreement fees provided for in § 427.11(b) shall be assessed ~~[quarterly]~~ annually for the preceding year ~~[quarter]~~, as of ~~[March 31, June 30, September 30 and]~~ December 31 of each year.
- (1) Each ~~annual~~ [quarterly] payment shall be payable and reportable ~~[no less than thirty (30) days after the relevant assessment date]~~ on or before February 1<sup>st</sup> of the following year.
- (2) Each payment shall be accompanied by a report from the ~~[licensee]~~ ROW User in a form approved by the Director and the City Treasurer showing the basis for the computation, including a break-down of companies and individuals using the ROW User's services and amounts each of them paid to the ROW User, and other relevant data as may be required by the Director or the City Treasurer.
- (3) Each of the reports shall contain a notarized verification by the chief financial officer of the ~~[licensee]~~ ROW User and the reports may ~~[shall]~~ be verified annually, within ninety (90) days of the close of business of the last day of the calendar year, by a certified public accountant selected by the City at the expense of the ~~[licensee]~~ ROW User.
- (4) Failure to comply strictly with this section shall be deemed to be a violation of this Chapter and shall subject the ~~[licensee]~~ ROW User to all penalties and remedies, both legal and equitable which are available to the City, including but not limited to issuing citations and assessing penalties of up to \$300 per day per incidence of noncompliance.
- (c) The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall the acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable.
- (1) All compensation and / or fee payments shall be subject to audit by the City Treasurer and assessment or

refund if the payment is found to be in error.

- (2) In the event that audit results in an ~~[assessment by]~~ amount owed and an additional payment to the City, additional payment shall be subject to interest at the rate of six (6) percent per year and to a penalty of six (6) percent per year, which shall be due and payable immediately.
- (d) Nothing in this Chapter shall be construed to limit the liability of the ~~[licensee]~~ ROW User for all applicable federal, state and local taxes.

§ 427.13 - UNREGISTERED, ABANDONED AND UNUSABLE EQUIPMENT.

- (a) One hundred eighty (180) days after the effective date of the ordinance adopting this Chapter, any equipment in a right-of-way that is owned or otherwise under the control of a person who has not executed a ROW Use Agreement, or otherwise is not registered with the City, shall be deemed a nuisance.
- (b) A ROW User who has determined to discontinue all operations in the City must either:
- (1) Provide information satisfactory to the Director of the Department of Public Works that the ROW User's obligations for its facilities in the rights-of-way under this Chapter and under other applicable provisions of this Code have been lawfully assumed by another ROW User;
  - (2) Obtain written permission from the Director of the Department of Public Works to abandon the facilities in place; or
  - (3) Submit to the Director of the Department of Public Works a proposal and instruments for transferring ownership of its facilities to the City, and the City accepts such proposal in writing.
- (c) Facilities of a ROW User who fails to comply with this Chapter shall be deemed to be abandoned. Abandoned facilities shall be deemed to constitute a nuisance.
- (d) In dealing with unregistered, abandoned or unusable equipment deemed to be a nuisance, the City may exercise any remedies or rights it has at law or in equity, including, but not limited to:
- (1) Abating the nuisance and seeking reimbursement from the ROW User for the cost of abatement; or
  - (2) Taking possession of the facilities and using them as deemed to be in the City's best interests, including, but not limited to, upgrading, reusing, sale or lease.

§ 427.14 - INDEMNITY AND INSURANCE.

- (a) The City shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever, including damages from the City's negligent omissions, if any, arising from the use, operation or condition of the ~~[licensee]~~ ROW User's telecommunications system.
- (b) The ~~[licensee]~~ ROW User shall indemnify, save and hold harmless and defend the City from all liens; charges; claims, including but not limited to, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name or service mark; demands; suits; actions; fines; penalties; losses; costs, including

but not limited to, reasonable legal fees and court costs; judgments; injuries; liabilities or damages, in law or equity, of any and every kind and nature whatsoever, including damages caused by or arising out of any act of negligent omission of the City, its officers, servants, agents, employees or contractors, or otherwise, arising out of or in any way connected with the installation, operation, maintenance or condition of the [licensee] ROW User's telecommunications system.

- (c) The Director of ~~the [City Information Systems]~~ Department of Public Works, in consultation with the City Solicitor, shall set the type and coverage of insurance required. In setting the amount, the Director shall take into consideration the size and location of the telecommunications system, the financial resources of the [licensee] ROW User, risk involved to the City and to the general public as well as other salient factors.

§ 427.15 - POLICE POWERS.

Nothing in this Chapter or in any [license] ROW Use Agreement issued in accordance herewith shall be construed as an abrogation by the City of any of its police powers.

§ 427.16 - USE OF STREETS AND POLE ATTACHMENTS.

- (a) Before commencing construction of its telecommunications system in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the City, the [licensee] ROW User shall first obtain the written approval of all appropriate City agencies, including, but not limited to, the Department of ~~[City Information Systems]~~ of Public Works. Applications for approval shall be made in the form prescribed by the Department of ~~[City Information Systems]~~ Department of Public Works.
- (b) Upon obtaining written approval, the [licensee] ROW User shall give the appropriate agency written notice within a reasonable time of proposed construction, but in no event shall the notice be given less than ten (10) days before the commencement.
- (c) Any Applicant who submits a request for a [license] ROW Use Agreement in accordance herewith shall include therein proposed agreements for the use of existing utility poles and conduits, if applicable, with the owner(s) of the facilities to be used or affected by the construction of the proposed telecommunications system. Said proposed agreements for the use of existing utility poles and conduits ~~[, which agreements]~~ shall become effective on the date of execution of the [license] ROW Use Agreement issued in accordance herewith in the event that the person is issued a [license] ROW Use Agreement.
- (d) It shall be unlawful for the [licensee] ROW User or any other person to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining approval to do so after proceeding in the manner prescribed in subsections (a) and (b) hereof. Violation of this section shall subject the [licensee] ROW User to all penalties and remedies prescribed ~~[there]~~ in this Chapter and to all other remedies, legal or equitable, which are available to the City, including but not limited to issuing citations and assessing penalties of up to

\$300 per day per violation.

- (e) The [licensee] ROW User shall restore any street or sidewalk it has disturbed in accordance with the provisions of Article I (Streets and Sidewalks) of Title Four-Public Places and Property, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on accounts of its activities to as good as the condition such property was in immediately prior to the disturbance, damage or injury or pay the fair market value of the property to its owner.
- (f) The [licensee] ROW User shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any of its property when required to do so by the City because of street or other public excavation, construction, repair, regrading or grading; traffic conditions; installation of sewers, drains, water pipes, City owned power or signal lines or tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare.
- (g) Nothing in this Chapter or any [license] ROW Use Agreement issued in accordance herewith shall be construed as authorizing the [licensee] ROW User to erect and maintain new poles in areas serviced by existing poles. The [licensee] ROW User shall obtain written approval from the Department of [~~City Information Systems~~] Department of Public Works and other appropriate City agencies before erecting any new poles or underground conduits where none exist.
- (h) The [licensee] ROW User shall maintain all wires, conduits, cables and other real and personal property and facilities in good condition, order and repair.
- (i) The [licensee] ROW User shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, Rights-Of-Way, [~~p~~] Public W[~~w~~ays and public places within the City and shall furnish, as soon as they are available, two (2) complete copies of the maps and records, in a form approved by the Approval Authority, to the Department of [~~City Information Systems~~] Public Works.
- (j) The [licensee] ROW User shall comply with all rules and regulations issued by the Department of [~~City Information Systems~~] Department of Public Works governing the construction and installation of telecommunications systems. In addition:
- (1) All aerial cables and wires shall be installed parallel with existing telephone and electric utility wires; and
  - (2) Multiple aerial configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and
  - (3) All underground installations shall be in the appropriate size and type conduit or other enclosures approved by the Director; and
  - (4) All installations shall be underground in those areas of the City where both telephone and electric utilities' facilities are underground at the time of the installation of the [licensee] ROW User's telecommunications system.
    - A. In areas where both telephone and electric utilities' facilities are above ground at the time of the



installation of the [licensee] ROW User's telecommunications system, the [licensee] ROW User may install its system above ground on existing utility poles only, upon the condition that at such time as those facilities are placed underground by the telephone and electric utility companies, the [licensee] ROW User shall likewise place its facilities underground at its sole cost and expense.

- (5) The [licensee] ROW User upon reasonable notice by the City shall temporarily or permanently remove, adjust, raise or lower its facilities within the right-of-way when the City determines that the action is needed for public use of the right-of-way including but not limited to the passage of nonstandard vehicles.
- (6) The [licensee] ROW User shall obtain the written permission of the owner including the City of any tree or other vegetation before it trims or prunes the same.

§ 427.17 - USE OF CONDUITS, DUCTS AND EQUIPMENT BY CITY.

~~[The City may install or affix and maintain wires and equipment for municipal purposes upon any and all of Licensee's ducts, conduits or equipment, without charge to the City. For the purposes of this section, the term **MUNICIPAL PURPOSES** includes but is not limited to the use of the structures and installations for City fire, police, other emergency, traffic, water, telephone, and/or signal systems. Any value of such use of Licensee's facilities may not be deducted from any fees payable to the City. Licensee shall not be responsible for any damage resulting to the wires or property of the City occurring as a result of City's use of licensee's conduits. ]~~

(a) The City may install or affix and maintain wires and equipment for municipal purposes upon any and all of ROW User's ducts, conduits, equipment, or underground equipment within the Rights-Of-Way or Public Ways without charge to the City.

(1) For the purposes of this Section, the term "Municipal Purposes" includes but is not limited to the use of the structures and installations for City fire, police, other emergency, traffic, water, telephone, and/or signal systems.

(2) For purposes of this Section, the term "Equipment" includes tangible property located in the rights-of-way used to deliver services, including but not limited to, street signs, traffic signals, wires, cables, poles, base stations, facilities, conduits and ducts.

(3) For purposes of this Section, the term "Underground Equipment" means all Equipment, as defined herein, that is located wholly or partially underneath **Rights-Of-Way**.

(4) As used in this Chapter, "Transmission Equipment" as defined *supra*, in Chapter 427.03, is excluded from the definitions of Equipment and Underground Equipment.

(b) Any value of such use of ROW User's facilities or Equipment may not be deducted from any fees or compensation payable to the City. ROW User shall not be responsible for any damage resulting to the wires or property of the City occurring as a result of City's use of ROW User's conduits.

§ 427.18 - TRANSFERS AND ASSIGNMENTS.

- (a) The ~~[licensee]~~ ROW User shall not transfer or assign its interest in any ~~[license]~~ ROW Use Agreement issued in accordance herewith without the prior written authorization of the Director, of the [City Information Systems] Department of Public Works. For purposes of this section, a merger or consolidation shall be deemed a transfer or assignment.
- (b) Nothing in any approval by the Director, of the [City Information Systems] Department of Public Works authorizing any transfer or assignment of any ~~[license]~~ ROW Use Agreement issued in accordance herewith shall be construed to waive or release any rights of the City in and to the streets, public ways and public places of the City or as a release of any of the City's police powers.
- (c) If the ROW User merges with another entity, changes its name or sells substantially all of its assets, said ROW User shall notify the Director of the Department of Public Works of said event(s) within thirty (30) days of said occurrence.