

2 **ESSB 6676** - H AMD TO TTE COMM AMD (H-4982.1/00) **586 ADOPTED 3-1-00**  
3 By Representative

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5 Strike everything after page 1, line 6 of the amendment, and insert  
6 the following:

7 "NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Cable television service" means the one-way transmission to  
10 subscribers of video programming and other programming service and  
11 subscriber interaction, if any, that is required for the selection or  
12 use of the video programming or other programming service.

13 (2) "Facilities" means all of the plant, equipment, fixtures,  
14 appurtenances, antennas, and other facilities necessary to furnish and  
15 deliver telecommunications services and cable television services,  
16 including but not limited to poles with crossarms, poles without  
17 crossarms, wires, lines, conduits, cables, communication and signal  
18 lines and equipment, braces, guys, anchors, vaults, and all  
19 attachments, appurtenances, and appliances necessary or incidental to  
20 the distribution and use of telecommunications services and cable  
21 television services.

22 (3) "Master permit" means the agreement in whatever form whereby a  
23 city or town may grant general permission to a service provider to  
24 enter, use, and occupy the right of way for the purpose of locating  
25 facilities. This definition is not intended to limit, alter, or change  
26 the extent of the existing authority of a city or town to require a  
27 franchise nor does it change the status of a service provider asserting  
28 an existing state-wide grant based on a predecessor telephone or  
29 telegraph company's existence at the time of the adoption of the  
30 Washington state Constitution to occupy the right of way. For the  
31 purposes of this subsection, a franchise, except for a cable television  
32 franchise, is a master permit. A master permit does not include cable  
33 television franchises.

34 (4) "Personal wireless services" means commercial mobile services,  
35 unlicensed wireless services, and common carrier wireless exchange  
36 access services, as defined by federal laws and regulations.

1 (5) "Right of way" means land acquired or dedicated for public  
2 roads and streets, but does not include:

3 (a) State highways;

4 (b) Land dedicated for roads, streets, and highways not opened and  
5 not improved for motor vehicle use by the public;

6 (c) Structures, including poles and conduits, located within the  
7 right of way;

8 (d) Federally granted trust lands or forest board trust lands;

9 (e) Lands owned or managed by the state parks and recreation  
10 commission; or

11 (f) Federally granted railroad rights of way acquired under 43  
12 U.S.C. Sec. 912 and related provisions of federal law that are not open  
13 for motor vehicle use.

14 (6) "Service provider" means every corporation, company,  
15 association, joint stock association, firm, partnership, person, city,  
16 or town owning, operating, or managing any facilities used to provide  
17 and providing telecommunications or cable television service for hire,  
18 sale, or resale to the general public. Service provider includes the  
19 legal successor to any such corporation, company, association, joint  
20 stock association, firm, partnership, person, city, or town.

21 (7) "Telecommunications service" means the transmission of  
22 information by wire, radio, optical cable, electromagnetic, or other  
23 similar means for hire, sale, or resale to the general public. For the  
24 purpose of this subsection, "information" means knowledge or  
25 intelligence represented by any form of writing, signs, signals,  
26 pictures, sounds, or any other symbols. For the purpose of this  
27 chapter, telecommunications service excludes the over-the-air  
28 transmission of broadcast television or broadcast radio signals.

29 (8) "Use permit" means the authorization in whatever form whereby  
30 a city or town may grant permission to a service provider to enter and  
31 use the specified right of way for the purpose of installing,  
32 maintaining, repairing, or removing identified facilities.

33 NEW SECTION. **Sec. 2.** A city or town may grant, issue, or deny  
34 permits for the use of the right of way by a service provider for  
35 installing, maintaining, repairing, or removing facilities for  
36 telecommunications services or cable television services pursuant to  
37 ordinances, consistent with this act.

1        NEW SECTION.    **Sec. 3.**    (1) Cities and towns may require a service  
2 provider to obtain a master permit.    A city or town may request, but  
3 not require, that a service provider with an existing state-wide grant  
4 to occupy the right of way obtain a master permit for wireline  
5 facilities.

6        (a) The procedures for the approval of a master permit and the  
7 requirements for a complete application for a master permit shall be  
8 available in written form.

9        (b) Where a city or town requires a master permit, the city or  
10 town shall act upon a complete application within one hundred twenty  
11 days from the date a service provider files the complete application  
12 for the master permit to use the right of way, except:

13        (i) With the agreement of the applicant; or

14        (ii) Where the master permit requires action of the legislative  
15 body of the city or town and such action cannot reasonably be obtained  
16 within the one hundred twenty day period.

17        (2) A city or town may require that a service provider obtain a use  
18 permit.    A city or town must act on a request for a use permit by a  
19 service provider within thirty days of receipt of a completed  
20 application, unless a service provider consents to a different time  
21 period or the service provider has not obtained a master permit  
22 requested by the city or town.

23        (a) For the purpose of this section, "act" means that the city  
24 makes the decision to grant, condition, or deny the use permit, which  
25 may be subject to administrative appeal, or notifies the applicant in  
26 writing of the amount of time that will be required to make the  
27 decision and the reasons for this time period.

28        (b) Requirements otherwise applicable to holders of master permits  
29 shall be deemed satisfied by a holder of a cable franchise in good  
30 standing.

31        (c) Where the master permit does not contain procedures to expedite  
32 approvals and the service provider requires action in less than thirty  
33 days, the service provider shall advise the city or town in writing of  
34 the reasons why a shortened time period is necessary and the time  
35 period within which action by the city or town is requested.    The city  
36 or town shall reasonably cooperate to meet the request where  
37 practicable.

1 (d) A city or town may not deny a use permit to a service provider  
2 with an existing state-wide grant to occupy the right of way for  
3 wireline facilities on the basis of failure to obtain a master permit.

4 (3) The reasons for a denial of a master permit shall be supported  
5 by substantial evidence contained in a written record. A service  
6 provider adversely affected by the final action denying a master  
7 permit, or by an unreasonable failure to act on a master permit as set  
8 forth in subsection (1) of this section, may commence an action within  
9 thirty days to seek relief, which shall be limited to injunctive  
10 relief.

11 (4) A service provider adversely affected by the final action  
12 denying a use permit may commence an action within thirty days to seek  
13 relief, which shall be limited to injunctive relief. In any appeal of  
14 the final action denying a use permit, the standard for review and  
15 burden of proof shall be as set forth in RCW 36.70C.130.

16 (5) A city or town shall:

17 (a) In order to facilitate the scheduling and coordination of work  
18 in the right of way, provide as much advance notice as reasonable of  
19 plans to open the right of way to those service providers who are  
20 current users of the right of way or who have filed notice with the  
21 clerk of the city or town within the past twelve months of their intent  
22 to place facilities in the city or town. A city is not liable for  
23 damages for failure to provide this notice. Where the city has failed  
24 to provide notice of plans to open the right of way consistent with  
25 this subsection, a city may not deny a use permit to a service provider  
26 on the basis that the service provider failed to coordinate with  
27 another project.

28 (b) Have the authority to require that facilities are installed and  
29 maintained within the right of way in such a manner and at such points  
30 so as not to inconvenience the public use of the right of way or to  
31 adversely affect the public, health, safety, and welfare.

32 (6) A service provider shall:

33 (a) Obtain all permits required by the city or town for the  
34 installation, maintenance, repair, or removal of facilities in the  
35 right of way;

36 (b) Comply with applicable ordinances, construction codes,  
37 regulations, and standards subject to verification by the city or town  
38 of such compliance;

1 (c) Cooperate with the city or town in ensuring that facilities are  
2 installed, maintained, repaired, and removed within the right of way in  
3 such a manner and at such points so as not to inconvenience the public  
4 use of the right of way or to adversely affect the public health,  
5 safety, and welfare;

6 (d) Provide information and plans as reasonably necessary to enable  
7 a city or town to comply with subsection (5) of this section,  
8 including, when notified by the city or town, the provision of advance  
9 planning information pursuant to the procedures established by the city  
10 or town;

11 (e) Obtain the written approval of the facility or structure owner,  
12 if the service provider does not own it, prior to attaching to or  
13 otherwise using a facility or structure in the right of way;

14 (f) Construct, install, operate, and maintain its facilities at its  
15 expense; and

16 (g) Comply with applicable federal and state safety laws and  
17 standards.

18 (7) Nothing in this section shall be construed as:

19 (a) Creating a new duty upon city or towns to be responsible for  
20 construction of facilities for service providers or to modify the right  
21 of way to accommodate such facilities;

22 (b) Creating, expanding, or extending any liability of a city or  
23 town to any third-party user of facilities or third-party beneficiary;  
24 or

25 (c) Limiting the right of a city or town to require an  
26 indemnification agreement as a condition of a service provider's  
27 facilities occupying the right of way.

28 (8) Nothing in this section creates, modifies, expands, or  
29 diminishes a priority of use of the right of way by a service provider  
30 or other utility, either in relation to other service providers or in  
31 relation to other users of the right of way for other purposes.

32 NEW SECTION. **Sec. 4.** (1) A city or town shall not adopt or  
33 enforce regulations or ordinances specifically relating to use of the  
34 right of way by a service provider that:

35 (a) Impose requirements that regulate the services or business  
36 operations of the service provider, except where otherwise authorized  
37 in state or federal law;

1 (b) Conflict with federal or state laws, rules, or regulations that  
2 specifically apply to the design, construction, and operation of  
3 facilities or with federal or state worker safety or public safety  
4 laws, rules, or regulations;

5 (c) Regulate the services provided based upon the content or kind  
6 of signals that are carried or are capable of being carried over the  
7 facilities, except where otherwise authorized in state or federal law;  
8 or

9 (d) Unreasonably deny the use of the right of way by a service  
10 provider for installing, maintaining, repairing, or removing facilities  
11 for telecommunications services or cable television services.

12 (2) Nothing in this chapter, including but not limited to the  
13 provisions of subsection (1)(d) of this section, limits the authority  
14 of a city or town to regulate the placement of facilities through its  
15 local zoning or police power, if the regulations do not otherwise:

16 (a) Prohibit the placement of all wireless or of all wireline  
17 facilities within the city or town;

18 (b) Prohibit the placement of all wireless or of all wireline  
19 facilities within city or town rights of way, unless the city or town  
20 is less than five square miles in size and has no commercial areas, in  
21 which case the city or town may make available land other than city or  
22 town rights of way for the placement of wireless facilities; or

23 (c) Violate section 253 of the telecommunications act of 1996, P.L.  
24 104-104 (110 Stat. 56).

25 (3) This section does not amend, limit, repeal, or otherwise modify  
26 the authority of cities or towns to regulate cable television services  
27 pursuant to federal law.

28 NEW SECTION. Sec. 5. (1) A city or town shall not place or extend  
29 a moratorium on the acceptance and processing of applications,  
30 permitting, construction, maintenance, repair, replacement, extension,  
31 operation, or use of any facilities for personal wireless services,  
32 except as consistent with the guidelines for facilities siting  
33 implementation, as agreed to on August 5, 1998, by the federal  
34 communications commission's local and state government advisory  
35 committee, the cellular telecommunications industry association, the  
36 personal communications industry association, and the American mobile  
37 telecommunications association. Any city or town implementing such a  
38 moratorium shall, at the request of a service provider impacted by the

1 moratorium, participate with the service provider in the informal  
2 dispute resolution process included with the guidelines for facilities  
3 siting implementation.

4 NEW SECTION. **Sec. 6.** (1) Cities and towns may require service  
5 providers to relocate authorized facilities within the right of way  
6 when reasonably necessary for construction, alteration, repair, or  
7 improvement of the right of way for purposes of public welfare, health,  
8 or safety.

9 (2) Cities shall notify service providers as soon as practicable of  
10 the need for relocation and shall specify the date by which relocation  
11 shall be completed. In calculating the date that relocation must be  
12 completed, cities shall consult with affected service providers and  
13 consider the extent of facilities to be relocated, the services  
14 requirements, and the construction sequence for the relocation, within  
15 the city's overall project construction sequence and constraints, to  
16 safely complete the relocation. Service providers shall complete the  
17 relocation by the date specified, unless the city, or a reviewing  
18 court, establishes a later date for completion, after a showing by the  
19 service provider that the relocation cannot be completed by the date  
20 specified using best efforts and meeting safety and service  
21 requirements.

22 (3) Service providers may not seek reimbursement for their  
23 relocation expenses from the city or town requesting relocation under  
24 subsection (1) of this section except:

25 (a) Where the service provider had paid for the relocation cost of  
26 the same facilities at the request of the city or town within the past  
27 five years, the service provider's share of the cost of relocation will  
28 be paid by the city or town requesting relocation;

29 (b) Where aerial to underground relocation of authorized facilities  
30 is required by the city or town under subsection (1) of this section,  
31 for service providers with an ownership share of the aerial supporting  
32 structures, the additional incremental cost of underground compared to  
33 aerial relocation, or as provided for in the approved tariff if less,  
34 will be paid by the city or town requiring relocation; and

35 (c) Where the city or town requests relocation under subsection (1)  
36 of this section solely for aesthetic purposes, unless otherwise agreed  
37 to by the parties.

1 (4) Where a project in subsection (1) of this section is primarily  
2 for private benefit, the private party or parties shall reimburse the  
3 cost of relocation in the same proportion to their contribution to the  
4 costs of the project. Service providers will not be precluded from  
5 recovering their costs associated with relocation required under  
6 subsection (1) of this section, provided that the recovery is  
7 consistent with subsection (3) of this section and other applicable  
8 laws.

9 (5) A city or town may require the relocation of facilities at the  
10 service provider's expense in the event of an unforeseen emergency that  
11 creates an immediate threat to the public safety, health, or welfare.

12 NEW SECTION. **Sec. 7.** A city or town may require that a service  
13 provider that is constructing, relocating, or placing ducts or conduits  
14 in public rights of way provide the city or town with additional duct  
15 or conduit and related structures necessary to access the conduit,  
16 provided that:

17 (1) The city or town enters into a contract with the service  
18 provider consistent with RCW 80.36.150. The contract rates to be  
19 charged should recover the incremental costs of the service provider.  
20 If the city or town makes the additional duct or conduit and related  
21 access structures available to any other entity for the purposes of  
22 providing telecommunications or cable television service for hire,  
23 sale, or resale to the general public, the rates to be charged, as set  
24 forth in the contract with the entity that constructed the conduit or  
25 duct, shall recover at least the fully allocated costs of the service  
26 provider. The service provider shall state both contract rates in the  
27 contract. The city or town shall inform the service provider of the  
28 use, and any change in use, of the requested duct or conduit and  
29 related access structures to determine the applicable rate to be paid  
30 by the city or town.

31 (2) Except as otherwise agreed by the service provider and the city  
32 or town, the city or town shall agree that the requested additional  
33 duct or conduit space and related access structures will not be used by  
34 the city or town to provide telecommunications or cable television  
35 service for hire, sale, or resale to the general public.

36 (3) The city or town shall not require that the additional duct or  
37 conduit space be connected to the access structures and vaults of the  
38 service provider.



1 (4) The value of the additional duct or conduit requested by a city  
2 or town shall not be considered a public works construction contract.

3 (5) This section shall not affect the provision of an institutional  
4 network by a cable television provider under federal law.

5 **Sec. 8.** RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each amended  
6 to read as follows:

7 (1) No city or town may impose a franchise fee or any other fee or  
8 charge of whatever nature or description upon the light and power, or  
9 gas distribution businesses, as defined in RCW 82.16.010, or telephone  
10 business, as defined in RCW 82.04.065, or service provider for use of  
11 the right of way, except ((that)):

12 (a) A tax authorized by RCW 35.21.865 may be imposed ((and));

13 (b) A fee may be charged to such businesses or service providers  
14 that recovers actual administrative expenses incurred by a city or town  
15 that are directly related to receiving and approving a permit, license,  
16 and franchise, to inspecting plans and construction, or to the  
17 preparation of a detailed statement pursuant to chapter 43.21C RCW;

18 (c) Taxes permitted by state law on service providers;

19 (d) Franchise requirements and fees for cable television services  
20 as allowed by federal law; and

21 (e) A site-specific charge pursuant to an agreement between the  
22 city or town and a service provider of personal wireless services  
23 acceptable to the parties for:

24 (i) The placement of new structures in the right of way regardless  
25 of height, unless the new structure is the result of a mandated  
26 relocation in which case no charge will be imposed if the previous  
27 location was not charged;

28 (ii) The placement of replacement structures when the replacement  
29 is necessary for the installation or attachment of wireless facilities,  
30 and the overall height of the replacement structure and the wireless  
31 facility is more than sixty feet; or

32 (iii) The placement of personal wireless facilities on structures  
33 owned by the city or town located in the right of way. However, a  
34 site-specific charge shall not apply to the placement of personal  
35 wireless facilities on existing structures, unless the structure is  
36 owned by the city or town.

37 A city or town is not required to approve the use permit for the  
38 placement of a facility for personal wireless services that meets one

1 of the criteria in this subsection absent such an agreement. If the  
2 parties are unable to agree on the amount of the charge, the service  
3 provider may submit the amount of the charge to binding arbitration by  
4 serving notice on the city or town. Within thirty days of receipt of  
5 the initial notice, each party shall furnish a list of acceptable  
6 arbitrators. The parties shall select an arbitrator; failing to agree  
7 on an arbitrator, each party shall select one arbitrator and the two  
8 arbitrators shall select a third arbitrator for an arbitration panel.  
9 The arbitrator or arbitrators shall determine the charge based on  
10 comparable siting agreements involving public land and rights of way.  
11 The arbitrator or arbitrators shall not decide any other disputed  
12 issues, including but not limited to size, location, and zoning  
13 requirements. Costs of the arbitration, including compensation for the  
14 arbitrator's services, must be borne equally by the parties  
15 participating in the arbitration and each party shall bear its own  
16 costs and expenses, including legal fees and witness expenses, in  
17 connection with the arbitration proceeding.

18 (2) Subsection (1) of this section does not prohibit franchise fees  
19 imposed on an electrical energy, natural gas, or telephone business, by  
20 contract existing on April 20, 1982, with a city or town, for the  
21 duration of the contract, but the franchise fees shall be considered  
22 taxes for the purposes of the limitations established in RCW 35.21.865  
23 and 35.21.870 to the extent the fees exceed the costs allowable under  
24 subsection (1) of this section.

25 NEW SECTION. Sec. 9. This act shall not preempt specific  
26 provisions in existing franchises or contracts between cities or towns  
27 and service providers.

28 NEW SECTION. Sec. 10. A new section is added to chapter 35A.21  
29 RCW to read as follows:

30 Each code city is subject to the requirements and restrictions  
31 regarding facilities and rights of way under this chapter.

32 NEW SECTION. Sec. 11. Sections 1 through 7 and 9 of this act  
33 constitute a new chapter in Title 35 RCW."

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2 By Representative

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4 On page 17, beginning on line 28 of the title amendment, after

5 "35.21.860;" strike "reenacting and amending RCW 42.17.310;"

--- END ---