

2 **ESSB 6676** - H COMM AMD ADOPTED AS AMENDED 3/1/00
3 By Committee on Technology, Telecommunications & Energy

4
5 Strike everything after the enacting clause and insert the
6 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."

1 **ESSB 6676** - H COMM AMD
2 By Committee on Technology, Telecommunications & Energy

3
4 On page 1, line 2 of the title, after "providers;" strike the
5 remainder of the title and insert "amending RCW 35.21.860; adding a new
6 section to chapter 35A.21 RCW; and adding a new chapter to Title 35
7 RCW."

--- END ---