
SENATE BILL 5654

State of Washington

56th Legislature

1999 Regular Session

By Senator Finkbeiner

Read first time 02/01/1999. Referred to Committee on Energy, Technology & Telecommunications.

1 AN ACT Relating to telecommunications users of public rights-of-
2 way; amending RCW 35.21.860 and 36.55.010; and adding a new chapter to
3 Title 80 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Authorized facilities" means all of the plant, equipment,
9 fixtures, appurtenances, antennas, and other facilities necessary to
10 furnish and deliver telecommunications services and cable television
11 services, including but not limited to poles with crossarms, poles
12 without crossarms, wires, lines, conduits, cables, communication and
13 signal lines and equipment, braces, guys, anchors, vaults, and all
14 attachments, appurtenances, and appliances necessary or incidental to
15 the distribution and use of telecommunications services and cable
16 television services.

17 (2) "Authorized user" means every corporation, company,
18 association, joint stock association, partnership, and person; their
19 lessees, trustees, or receivers appointed by any court whatsoever; and

1 every city or town owning, operating, or managing any facilities used
2 to provide telecommunications for hire, sale, or resale to the general
3 public within this state.

4 (3) "Cable television service" means the one-way transmission to
5 subscribers of video programming or other programming service and
6 subscriber interaction, if any, which is required for the selection or
7 use of such video programming or other programming service.

8 (4) "Public right-of-way" means roads, streets, and highways
9 dedicated or secured by the public for public use, but does not
10 include:

11 (a) Unimproved land dedicated for roads, streets, and highways that
12 are not currently in use;

13 (b) Structures located within the right-of-way;

14 (c) Federally granted trust lands and the forest board trust lands;

15 (d) Federally granted railroad rights-of-way acquired under 43
16 U.S.C. Sec. 912 and related provisions of federal law that are not open
17 for motor vehicle use; or

18 (e) Lands owned or managed by the state parks and recreation
19 commission.

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

27 NEW SECTION. **Sec. 2.** (1) The state, counties, cities, or towns,
28 consistent with state law, shall not deny the use of public rights-of-
29 way for the purposes of locating authorized facilities for
30 telecommunications services or cable television services provided that
31 authorized users ensure that:

32 (a) The authorized facilities comply with applicable land use and
33 construction codes, regulations, standards, and franchise requirements
34 adopted by state agencies, counties, cities, and towns not inconsistent
35 with state law or easement agreements for the use of private property;

36 (b) The authorized facilities are installed and maintained within
37 public rights-of-way in such manner and at such points so as not to
38 incommode the public use of the rights-of-way;

1 (c) The authorized users obtain all permits required for the
2 installation of authorized facilities as required by the state
3 agencies, counties, cities, and towns; and

4 (d) The use of a facility or structure in the public right-of-way,
5 or attachment to it, or the use of public property that is not public
6 right-of-way has received the explicit approval of, and is under such
7 conditions as may be agreed to by, the owner of the facility,
8 structure, or property.

9 (2) The reasons for a denial of the use of the public right-of-way
10 shall be clearly stated in writing.

11 (3) This section does not create or expand: (a) Liabilities of the
12 state, counties, cities, or towns regarding the construction,
13 installation, maintenance, or removal of authorized facilities; or (b)
14 duties owed by the state, counties, cities, or towns to authorized
15 users to construct, install, maintain, or remove authorized facilities.
16 In addition, this section does not extend any liability of the state,
17 counties, cities, or towns to any third party user of authorized
18 facilities.

19 (4) This section does not create, modify, or diminish the priority
20 of use for authorized facilities over other users of the public right-
21 of-way for other purposes.

22 NEW SECTION. **Sec. 3.** (1) Counties, cities, and towns may not
23 adopt or enforce regulations or ordinances specifically relating to
24 authorized users in public rights-of-way that:

25 (a) Impose requirements that regulate the services and business
26 operations of the authorized user, except where expressly authorized in
27 state or federal law;

28 (b) Conflict with federal or state laws, rules, and regulations
29 that specifically apply to the design, construction, and operation of
30 authorized facilities or with federal or state worker safety or public
31 safety laws, rules, and regulations; or

32 (c) Regulate services of authorized users based upon the content or
33 type of signals that are carried or are capable of being carried over
34 the telecommunications facilities, except where specifically authorized
35 in state or federal law.

36 (2) This section does not limit the authority of the counties,
37 cities, and towns to regulate the placement of authorized facilities
38 through local zoning authority, if:

1 (a) The regulations do not uniformly prohibit the placement of
2 authorized facilities within the county, city, or town, or uniformly
3 prohibit the placement of authorized facilities within county, city, or
4 town public rights-of-way, and do not have the effect of a barrier to
5 entry as prohibited by the telecommunications act of 1996, P.L. 104-104
6 (110 Stat. 56); and

7 (b) The regulations do not unreasonably discriminate or have the
8 effect of unreasonably discriminating between similarly situated
9 authorized users or authorized facilities.

10 NEW SECTION. **Sec. 4.** (1) The state department of transportation,
11 counties, cities, and towns shall adopt procedures for the issuance of
12 permits for authorized facilities. Under the adopted procedures,
13 permits shall be issued or denied within one hundred twenty days from
14 an applicant's filing of a complete application for a permit, except:

15 (a) Where required by specific procedures to assure coordination of
16 work within the public right-of-way that provide reasonable
17 opportunities for scheduling of work, including advance notice of
18 planned work, that conform with section 6 of this act, and that do not
19 impose unreasonable barriers to entry as prohibited by the
20 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56);

21 (b) With the agreement of the applicant;

22 (c) Where permits require the approval or cooperation of another
23 unit of government that cannot be obtained within the one hundred
24 twenty-day period;

25 (d) Where franchises require the approval of the legislative body
26 of the jurisdiction, if procedures allow the interim installation of
27 authorized facilities where the timeline to complete such a franchise
28 agreement is expected to exceed one hundred twenty days; or

29 (e) Issuance and renewals of franchises and related permits for
30 cable television service that are governed by federal law.

31 (2) For purposes of this section, the state department of
32 transportation, counties, cities, and towns shall adopt by rule or
33 ordinance the specific requirements necessary to deem an application
34 for a permit complete, and shall provide a copy of the requirements to
35 all applicants.

36 NEW SECTION. **Sec. 5.** (1) The Washington utilities and
37 transportation commission shall develop and maintain a centralized

1 registry where all authorized users must register. The registry shall
2 act as a central source for registering information necessary to the
3 management of public rights-of-way and shall reduce repetitive
4 requirements of counties, cities, and towns.

5 (2) Authorized users shall register with the commission and provide
6 information as determined necessary by the commission. The information
7 required shall include proof of insurance, bonds, letters of
8 indemnification, and other information capable of being collected once
9 and maintained centrally.

10 (3) Information contained in the registry and specifically
11 applicable to use of public rights-of-way shall be available to
12 counties, cities, and towns upon request. Information contained in the
13 registry shall not be duplicated through any requirements imposed by
14 counties, cities, and towns.

15 NEW SECTION. **Sec. 6.** (1) The Washington utilities and
16 transportation commission shall develop and maintain a centralized data
17 base accessible via the internet to provide information about
18 construction activities within public rights-of-way. The data base
19 shall include information necessary to coordinate construction
20 activities and reduce street openings and disruption within the public
21 rights-of-way.

22 (2) Counties, cities, and towns opting to manage authorized users
23 in public rights-of-way as provided in section 4(1)(a) of this act
24 shall notify the commission in advance of all street opening and
25 construction activities in the public rights-of-way and provide all
26 necessary information to the commission.

27 NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (2) of
28 this section, a county, city, town, or the state department of
29 transportation shall not place a moratorium on the acceptance and
30 processing of applications, permitting, construction, maintenance,
31 repair, replacement, extension, operation, or use of any personal
32 wireless communication facility after the effective date of this
33 section. Any moratorium that expires after the effective date of this
34 section shall not be extended in whole or in part.

35 (2) A city or town incorporated after the effective date of this
36 section may impose one moratorium that does not exceed one hundred
37 eighty days and is not extendable.

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

3 (1) No city or town may impose a franchise fee or any other fee or
4 charge of whatever nature or description upon the light and power, or
5 gas distribution businesses, as defined in RCW 82.16.010, ~~((or))~~
6 telephone business, as defined in RCW 82.04.065, or telecommunications
7 company, as defined in RCW 80.04.010, except that (a) a tax authorized
8 by RCW 35.21.865 may be imposed, (b) fees and franchise requirements
9 authorized by federal law may be imposed on cable television services,
10 as defined in section 1 of this act, and ~~((b))~~ (c) a fee may be
11 charged to such businesses that recovers actual administrative expenses
12 incurred by a city or town that are directly related to receiving and
13 approving a permit, license, and franchise, to inspecting plans and
14 construction, or to the preparation of a detailed statement pursuant to
15 chapter 43.21C RCW.

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

23 **Sec. 9.** RCW 36.55.010 and 1963 c 4 s 36.55.010 are each amended to
24 read as follows:

25 (1) Any ~~((board of))~~ county ~~((commissioners))~~ legislative authority
26 may grant franchises to persons or private or municipal corporations to
27 use the right-of-way of county roads in their respective counties for
28 the construction and maintenance of waterworks, gas pipes, telephone,
29 telegraph, and electric light lines, sewers, and any other such
30 facilities. However, a franchise fee or any other fee or charge of
31 whatever nature or description may not be imposed upon a
32 telecommunications company as defined in RCW 80.04.010, except that (a)
33 fees and franchise requirements authorized by federal law may be
34 imposed on cable television services, as defined in section 1 of this
35 act, and (b) a fee may be charged to such telecommunications service
36 companies that recovers actual administrative expenses incurred by a
37 county that are directly related to receiving and approving a permit,

1 license, and franchise, to inspecting plans and construction, or to the
2 preparation of a detailed statement pursuant to chapter 43.21C RCW.

3 (2) Subsection (1) of this section does not prohibit franchise fees
4 imposed on a telecommunications service company, by contract existing
5 on the effective date of this section, with a county, for the duration
6 of the contract.

7 NEW SECTION. Sec. 10. Sections 1 through 7 of this act constitute
8 a new chapter in Title 80 RCW.

--- END ---