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November 4, 2002

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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**RE: Notice of Written Ex Parte Comments - Two Originals filed in the proceedings captioned:**

***In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, WT Docket Nu. 99-217, GN Docket Yo. 00-185; In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, CS Docket Nu. 02-52.***

**Commission Public Forum on Rights-of-Way Issues to be Held on October 16, 2002, Public Notice, DA 02-1832 (rel. July 29, 2002); See also, Commission Releases Draft Agenda for Public Forum on Rights-of-Way Issues, Public Notice, DA- 02-2127 (rel. August 29, 2002); See also, Commission Releases Agenda for Public Forum on Rights-of-Way Issues, Public Notice, DA- 02-2578 (Rel October 8, 2002).**

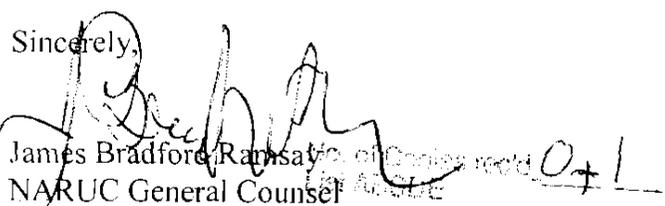
Secretary Dortch:

At the National Association of Regulatory Utility Commissioners' (NARUC's) July 2002 Meetings in Portland, Oregon, NARUC passed a "Resolution on Recommendations for Promoting Broadband Facility Access to Public Rights-of-Way and Public Lands" addressing a report drafted by a NARUC task force pursuant to an earlier resolution. Copies of both resolutions are attached.

NARUC determined *not* to endorse the Rights-of-Way report.

However, the resolution does "... without endorsing the report recommend[] that regulators, academia, units of government and all industry sectors carefully review the report."

Copies of the report were provided to FCC staff and commissioners attending the meeting in Portland. Moreover, during the recent October 16, 2002 FCC Rights-of-way Forum, NARUC provided 40 copies of the report to attendees, which included members of the FCC's staff. Accordingly, I am attaching and filing with this letter two copies of the "Report of the Study Committee on Public Rights-of-Way." NARUC requests any waivers needed to file this notice out-of-time. If you have questions about this filing, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,  
  
James Bradford Ramsay  
NARUC General Counsel

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*July 2002*

***Resolution on Recommendations for Promoting Broadband Facility Access to Public Rights-of-Way and Public Lands***

WHEREAS, In February 2002, NARUC' adopted a resolution encouraging all governmental entities to act on applications for access to public rights-of-way in a reasonable and fixed period of time, to treat all providers uniformly and in a competitively neutral manner consistent with applicable federal and State law, to ensure that their control over access to public rights-of-way and public lands is used to facilitate the deployment of telecommunications facilities; and

WHEREAS, That resolution also created a Study Committee on Public Rights-of-way and charged it with developing recommendations for reducing the extent to which rights-of-way access serves as a barrier to the deployment of advanced telecommunications and broadband networks; and

WHEREAS, The Study Committee invited and received participation by the industry and by groups representing agencies and governments that own public lands or offer public rights-of-way and other organizations representing governmental interests; and

WHEREAS, The Study Committee has produced a report that outlines several possible methods to address the competing interests involved; and

WHEREAS, The report of the Study Committee contains several views regarding the issues; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2002 Summer meetings in Portland Oregon, offers its thanks to the Study Committee and all those that have submitted ideas and participated in the Rights-of-way project and without endorsing the report recommends that regulators, academia, units of government and all industry sectors carefully review the report of the Study Committee on Public Rights-of-way.

*February 2002 Resolution on Access to Public Rights-of-Way and Public Lands*

WHEREAS, Federal, State, and local governmental entities have a legitimate and important role in managing their rights-of-way and public lands: and

WHEREAS, Local government efforts to promote deployment of advanced services have been exceedingly valuable; and

WHEREAS, The rights-of-way practices of certain of these entities have emerged as a significant barrier to the deployment of advanced telecommunications and broadband networks since passage of the 1996 Act; and

WHEREAS, Prompt, nondiscriminatory access to public rights-of-way and public lands at reasonable rates, terms, and conditions is essential to the development of facilities-based competition, the deployment of state-of-the-art telecommunications services to the public and the implementation of facilities-based/broadband network redundancy to safeguard against network outages; and

WHEREAS, Most States do not have pro-access laws, and ambiguities in the laws of some of those states that do have such laws have undermined compliance; and

WHEREAS, Existing federal, State, and local laws have not prevented certain governmental entities from imposing unreasonable compensation and other concessions that have increased the cost, delayed, or prevented deployment of these critically needed facilities; and

WHEREAS, The failure of a governmental unit to provide prompt, non-discriminatory access to public rights-of-ways and public lands - free of unreasonable compensation or conditions, might pose an insurmountable barrier to entry to new carriers offering innovative facilities-based/broadband and other services; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its February 2002 Winter Meetings in Washington, D.C., encourages all governmental entities to act on applications for access to public rights-of-way in a reasonable and fixed period of time, to treat all providers uniformly and in a competitively neutral manner consistent with applicable federal and State law, to ensure that their control over access to public rights-of-way and public lands is used to facilitate, and not to create an unnecessary burden to, the deployment of telecommunications facilities in the form of increased costs or delays, and to consider the impact of setting compensation above actual and direct costs on the deployment of advanced telecommunications and broadband networks; and be it further

RESOLVED, That NARUC encourages municipalities and managers of public lands to provide prompt, non-discriminatory access to requesting carriers at reasonable rates and terms, consistent with environmental stewardship and other management responsibilities; and be it further

RESOLVED, That NARLJC supports the vigorous enforcement of existing access laws by local governments, State Commissions, the FCC and other federal agencies, as well as the adoption of right-of-way access laws where none exist, and the review or reform of existing local, State and federal measures to ensure that rights-of-way access is eliminated as an actual or potential barrier to deployment; and be it further

RESOLVED, That the NARUC create a Study Committee on Public Rights of Way, to consist of members of the NARUC Telecommunications Committee, and the Telecommunications Staff Subcommittee and the Staff Subcommittee on Accounting and Finance, and be it further

RESOLVED, That the study committee is charged to develop recommendations for reducing the extent to which rights-of-way access serves as a barrier to the deployment of advanced telecommunications and broadband networks; and be it further

RESOLVED, That the committee shall invite participation by the industry and by groups representing agencies and governments that own public lands or offer public rights of way and other organizations representing governmental interests; and be it further

RESOLVED, That the committee shall report recommendations at the NARUC Summer meeting in 2002 at Portland, Oregon, for adoption by NARUC.

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# ROW

## RIGHTS-OF-WAY

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# Promoting Broadband Access Through Public Rights-of-way and Public Lands

2002 NARUC Summer Meetings in  
Portland, Oregon  
July 31, 2002

**The options listed within this report are the product of the  
Study Committee on Public Rights-of-way and do not necessarily reflect the views of NARUC.**

## **RIGHTS-OF-WAY**

The National Association of Regulatory Utility Commissioners (NARUC) has recognized that while governmental entities have a legitimate and important role in managing their rights-of-way and public lands, the rights-of-way practices of certain governmental entities have emerged as a barrier to the deployment of advanced telecommunications and broadband networks. NARUC believes that it has a key public policy role to support a pro-deployment, pro-consumer policy that ensures timely and cost-based access to rights-of-way. This policy role was recognized through the passage of a resolution at the NARUC Annual meetings held in Washington D.C. on February 13, 2002. As a consequence of this resolution, a rights-of-way study committee was created and charged with developing options for reducing the extent to which rights-of-way access serves as a barrier to the deployment of advanced telecommunications and broadband networks. The study committee consists of State Commission representatives from the NARUC Telecommunications and Finance & Technology Committees. Other participants from industry **and** groups representing state and local government were involved in the process. The five subgroups, and their chairs and staff, are as follows:

### Commissioners

Public Lands - Commissioner Paul Kjellander of Idaho  
State Legislation - Commissioner Bob Nelson of Michigan  
State and Local Policy Initiatives - Commissioner Angel Cartagena of Washington D.C  
Federal Legislative and Policy - Commissioner Terry Deason of Florida  
Condemnation - Commissioner John Burke of Vermont

### Staffers

Public Lands - Joe Cusick of Idaho  
State Legislation - Ken Roth of Michigan  
State and Local Policy Initiatives - Pam Melton of Washington D.C.  
Federal Legislative and Policy - Jason Fudge & John Mann of Florida  
Condemnation - Peter Bluhm of Vermont  
**Art** Work - Laura Gilleland-Beck of Florida

# ORIGIN

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# CHAPTER ONE STATE LEGISLATION

## I. INTRODUCTION

In a resolution adopted on February 13, 2002, NARUC created a Study Committee on Public Rights-of-way to “develop recommendations for reducing the extent to which rights-of-way access serves as a barrier to the deployment of advanced telecommunications and broadband networks.” The Study Committee divided its work plan among five subgroups, one of which is the State Legislation subgroup (excluding condemnation issues) chaired by Commissioner Robert B. Nelson of the Michigan Public Service Commission. The remit of the State Legislation subgroup is to survey existing state legislation, identify some of the best ideas in recent enactments, and develop “best practices” that could serve as a recommended model for future legislation.

Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. § 253, has provided an impetus for reforming right-of-way access on the state level. Consequently, this survey has focused on states that have enacted right-of-way access legislation since the federal act. The survey includes legislation enacted by the following states:

- |     |            |     |                |
|-----|------------|-----|----------------|
| 1.  | Arizona    | 11. | Missouri       |
| 2.  | California | 12. | Nebraska       |
| 3.  | Colorado   | 13. | North Dakota   |
| 4.  | Florida    | 14. | Ohio           |
| 5.  | Illinois   | 15. | Oregon         |
| 6.  | Indiana    | 16. | South Carolina |
| 7.  | Iowa       | 17. | Texas          |
| 8.  | Kansas     | 18. | Virginia       |
| 9.  | Michigan   | 19. | Washington     |
| 10. | Minnesota  |     |                |

Section II of this paper summarizes right-of-way reforms in recent legislation.

On March 14, 2002, Michigan Governor John Engler signed into law a package of bills designed to promote the deployment of ubiquitous, economical broadband service. One of the bills, the Metropolitan Extension Telecommunications Rights-of-way Oversight Act, Public Act 48 of 2002, is particularly relevant, in that it embodies standards and practices designed to overcome existing barriers to right-of-way access in Michigan. (Michigan has had prior experience implementing statutory right-of-way standards in Article 2A of the Michigan Telecommunications Act, Mich. Comp. Laws § 484.2251 et seq.<sup>1</sup> Public Act 48 builds upon that experience.) This statute positions Michigan as a leader in ongoing efforts to introduce state legislative reforms that make right-of-way access available

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<sup>1</sup> Article 2A was enacted in 1995 and is repealed by Public Act 48, effective November 1, 2002. However, the new act restates the substance of the Article 2A standards in several respects. 2002 Mich. Pub. Acts 48, § 15. When appropriate, this paper will provide citations to both enactments.

on terms that are fair, administratively efficient, nondiscriminatory, and pro-competitive. The end result should provide a boost to the widespread deployment of broadband service. Although some of the new provisions address circumstances that may be unique to Michigan, the basic framework of the statute is a case study of practices that could potentially enhance the fairness and efficiency of right-of-way access in most states. The Committee believes that this framework merits extended discussion as a guide for future state legislation. The statute's provisions are discussed in Section III.

Finally, Section IV makes selective judgments regarding which of the previously enacted standards and provisions should serve as a basis for future model state legislation. Its recommendations are stated in the form of proposed model state legislation.

## II. A SUMMARY OF STATE LEGISLATION

### A. An Overview.

Nancy J. Victory, Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration, has outlined four broad areas of contention that may arise when service providers interact with local or municipal governments over right-of-way access issues. Those four areas are: (1) the timeliness of the process for securing a permit, (2) fees, (3) "third tier" regulation that duplicates the jurisdictional oversight of federal and state agencies, and (4) regulatory treatment that favors some right-of-way users over others.<sup>2</sup> Because Ms. Victory's outline is a concise statement of a wide range of contemporary concerns, it can serve as a good framework for surveying and discussing state legislative practices in this paper.

Most state legislation enacted contemporaneously with the federal Telecommunications Act of 1996 contain standards that, in broad terms, require local permitting and fee assessment functions to be reasonable, competitively neutral, and nondiscriminatory. Most also impose generalized prohibitions against unreasonable fees, delay, and entry barriers. As a number of states can attest, it is often not enough to enact as standards worthy policy objectives that do not prescribe or proscribe more specific conduct. Attempts to enforce standards stated only in general terms often mean protracted litigation that, by itself, deters competitive entry and the introduction of advanced services.

As Ms. Victory also observed, "there are always two sides to each story." Local governments have an obvious stake in right-of-way management. As political subdivisions, they are directly responsible for the local interests most immediately affected by activities occurring within streets and rights-of-way. Thus, any effort to promote state legislative reform cannot ignore legitimate local concerns for public health, safety, and welfare. Moreover, the diversity of local conditions cautions against recommending "one size fits all" solutions. Most local governments are not predisposed against the introduction of new technologies and services and are not trying to wall off their communities from the economic and educational benefits of broadband deployment. However, the few that do persist in imposing undue burdens can have an effect that is disproportionate to their size. For example, a single suburban

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<sup>2</sup> Nancy J. Victory, Address Before the Third Annual James H. Quello Communications Policy and Law Symposium (March 16, 2002).

<sup>3</sup> *Id.*

government located within a metropolitan area can jeopardize a project based on constructing a fiber optic ring to serve numerous political subdivisions.

The majority view of the Committee is that the status quo has shortcomings. In many instances, right-of-way access is not as available as it should be. Parochial concerns sometimes slow, and occasionally halt, competition in communications services and the accelerated deployment of new technologies. Recent enactments suggest that state legislatures can alter right-of-way access issues for the better.

The task of the Study Committee is to identify and recommend solutions that will help all stakeholders. With respect to those issues in which providers and local governments are frequently in conflict, it may be necessary to strike balances that do not completely satisfy all interested persons. The objective of this survey is to identify and promote specific standards, requirements, or practices that potentially suggest more effective means of accomplishing the policy objectives set forth in 47 U.S.C. 253 without compromising the fair and efficient implementation of legitimate local concerns.

## B. A Framework of Competitive Concerns.

### 1. Timeliness of Permitting Procedures,

In addressing the permitting process, some right-of-way statutes make a distinction between a general consent to conduct operations and install facilities within a municipality (or its rights-of-way) and specific permission to engage in construction, make an excavation, divert normal traffic, or otherwise create a physical disruption at a certain time and place. The general consent traditionally takes the form of a franchise (now termed, in Washington, a master permit), and the specific permission to construct facilities is sometimes referred to as a construction permit (in Washington, it is known as a use permit). See Wash. Rev. Code § 35.99.010(3), (8). The Washington State law provides explicit time frames by which a municipality must grant a master permit, 120 days, and a use permit, 30 days. Some states may accommodate separate grants of general and specific permission, even though their right-of-way statutes do not expressly acknowledge or distinguish between both forms of permission.

In Michigan, the state law displaces the historical franchise requirement with a statutory permit, but it does not discuss or prescribe locally imposed ordinances that regulate a grant of specific permission to excavate a street. However, some municipalities in Michigan do prescribe detailed regulations concerning the latter pursuant to their general powers provided in the state constitution and statutes, and those local regulations are permissible if they are consistent with the right-of-way statute and other provisions of state law.

- a. *Time limits.* Some states require local governments to take action on an application for a permit within a fixed number of days. We believe this is an effective mechanism to ensure that telecommunications providers obtain timely access to the public rights-of-way.
  1. Right-of-way legislation in Kansas and Washington provide separate deadlines for general permission and a specific construction permit:
    - a. Kansas –
      - 90 days for a contract franchise. Kan. Stat. Ann. § 12-2001(h).

30 days for “any permit, license or consent to excavate, set poles, locate lines, construct facilities, make repairs, effect traffic flow, obtain zoning or subdivision regulation approvals, or for other similar approvals.” *Id.* § 17-1902(i).

a . **Washington** –

- 120 days for a master permit (“general permission . . . to enter, use, and occupy the right of way for the purpose of locating facilities”), subject to extension. Wash. Rev. Code § 35.99.030(1)(b).
- 30 days for a use permit (“permission . . . to enter and use the specified right of way for the purpose of installing, maintaining, repairing, or removing identified facilities”). *Id.* § 35.99.030(2).

2. **Missouri’s 3** 1-day deadline addresses right-of-way permit applications relating to a specific excavation. Mo. Rev. Stat. § 67.1836.3.
3. Other state statutes impose a single deadline for processing applications and either do not authorize two tiers of permits or do not set separate time provisions for each type of permission.
  - a . **Indiana** – 30 days, Ind. Code § 8-1-2-101(a).
  - b . **Michigan** – 90 days, Mich. Comp. Laws § 484.2251(3) (reduced to 45 days in 2002 Mich. Pub. Acts 48, § 15[3]).
  - c . **Ohio** – 30 days, Ohio Rev. Code § 4939.02(F).
  - d . **Virginia** – 45 days, Va. Code §§ 56-458.D, -462.D.

b. *Streamlined enforcement based on arbitration.* Some states have enacted a procedure for resolving disputes concerning permit decisions that can include binding arbitration, if both the applicant and municipality agree. The applicant **seeks** initial administrative review from the governing body of the municipality, which usually must be completed within a fixed time period and must result in a written ruling. Arbitration may then occur. The following incorporate the arbitration procedure (with nearly identical wording in each statute):

1. Iowa Code § 480A.5.
2. Mo. Rev. Stat. § 67.1838.
3. N.D. Cent. Code § 49-21-28.

2. Fees.

*Reasonableness standard.* Most recent enactments set standards that limit fees to the “reasonable cost” of managing rights-of-way (or some variation of this terminology) without prescribing fixed amounts or formulas.

- 1) Ariz. Rev. Stat. § 9-582, subsec. B (“All application fees, permit fees and charges. . . shall be . . . directly related to the costs incurred by the political subdivision in providing services relating to the granting or administration of applications or permits **[and]** also shall be reasonably related in time to the occurrence of the costs.”).
- Cal. Gov’t Code § 50030 (“[A]ny pennit fee. . . shall not exceed the reasonable costs of providing the service for which the fee is charged . . .”).
- Colo. Rev. Stat. § 38-5.5-107(1)(b) (“**All** fees and charges. . . shall be reasonably related to the costs directly incurred by the political subdivision in providing services relating to

the granting or administration of permits [and] also shall be reasonably related in time to the occurrence of such costs.”).

- Ind. Code § 8-1-2-101(b) (“[A] municipality or county executive may . . . require by ordinance fair and reasonable compensation [which] may not exceed the municipality’s or county executive’s direct, actual, and reasonably incurred costs of managing the public right-of-way caused by the public utility’s or department of public utilities’ occupancy.”).
- Iowa Code § 480A.3 (“**A** local government may recover from a public utility only those management costs caused by the public utility’s activity in the public right-of-way.”).
- Mich. Comp. Laws § 484.2253 (repealed in 2002 Mich. Pub. Acts 48) (“Any fees or assessments . . . shall not exceed the fixed and variable costs *to* the local unit of government in granting a permit and maintaining the right-of-ways, easements, or public places used by a provider.”).
- Minn. Stat. § 237.163, subd. 6(b) (“Fees. . . must be . . . based on the actual costs incurred by the local government unit in managing the public right-of-way, . . .”).
- Mo. Rev. Stat. § 67.1840.2(1) (“Right-of-way permit fees . . . shall be [b]ased on the actual, substantiated costs reasonably incurred by the political subdivision in managing the public right-of-way.”).
- Neb. Rev. Stat. § 86-301(4)(b) (“**All** public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits [and] shall also be reasonably related in time to the occurrence of such costs.”).
- N.D. Cent. Code § 49-21-26 (“**A** political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way.”).
- Ohio Rev. Code § 4939.03(B) (“The [construction permit] fee shall be limited to the recovery of the direct incremental costs incurred by the political subdivision in inspecting and reviewing any plans and specifications and in granting the associated permit.”).
- Wash. Rev. Code § 35.21.860(1)(b) (“**A** fee may be charged. . . that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed [statutory environmental] statement. . .”).
- Some statutes additionally list examples of specific types of costs that may be recovered:
  - **A** typical example is **Minnesota**, which provides that recoverable right-of-way management costs include “such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity *to* correct the work; and revoking right-of-way permits.” Minn. Stat. § 237.162, subd. 9.
  - Ind. Code § 8-1-2-101(b).
  - Kan. Stat. **Ann** § 17-1902(n) (related to construction or specific use permit).
  - Mo. Rev. Stat. § 67.1830(5).

- o The statutes cited for **Indiana** and **Missouri** take the additional step of explicitly foreclosing the exaction of fees to recover rent for the economic or property value of the rights-of-way.
- b. **Fixed or formulaic fees.** A few states have adopted mechanisms that set a fixed schedule of fees or a formula which, in some cases, may be unrelated to providers' actual impact on the public rights-of-way for determining a fixed fee.
- **Illinois** imposes state and municipal telecommunications infrastructure maintenance fees as a combined percentage of gross retail revenues. The state fee is 0.5%. 35 Ill. Comp. Stat. § 635/15. The municipal fees cannot exceed 1% in municipalities with a population of 500,000 or less, or 2% in municipalities with a population of 500,000 or more. 35 Ill. Comp. Stat. § 635/20.
  - **Florida** enacted a harmonized state and local communications services tax system, which functions as a sales or use tax assessed on the retail price of telecommunications services. Fla. Stat. § 202.10 et seq. The local tax component varies by locality. Of the combined state and local tax rate (which can exceed 10%), 0.24% is earmarked to replace permit fees foregone by local governments that opt to participate in the tax collection system instead of collecting fees. Fla. Stat. §§ 202.19, 337.401(3)(c).
  - The **Kansas** statute authorizes cities to charge fees as follows:
    - o Each city may impose either (1) an access line fee of up to \$2.00 per access line per month, or (2) a gross receipts fee of up to 5% on local services. Kan. Stat. Ann. § 12-2001(j).
    - o It may also assess a one-time franchise application fee to cover "reasonable, actual and verifiable costs of reviewing and approving the contract franchise." *Id.* § 12-2001(g).
    - o It may assess use permit fees as reimbursement for "reasonable, actual and verifiable costs" relating to issuing, processing, and verifying a permit application; repairing and restoring excavations and damages; and conducting inspections. The city may also require a performance bond. *Id.* § 17-1902(n).
  - **Oregon-**
    - Cities and towns may charge a privilege tax of up to 7% of gross revenues. Or. Rev. Stat. § 221.515. *Quest Corp. v City of Portland*, 200 F. Supp. 2d 1250 (D. Or. 2002) (granting summary judgment rejecting claim that 47 U.S.C. § 253 preempts statutory privilege tax).
    - The state Department of Transportation may charge a permit fee for use of state highways in accordance with a fixed fee schedule (until January 2, 2006). 2001 Or. Laws ch. 2, § 2.
    - There is no provision for counties to charge a permit fee for public roads located outside of cities. Or. Rev. Stat. § 758.010.
  - **South Carolina** authorizes municipalities to implement a two-tiered tax system.
    - A. A business license tax of up to 0.75% of retail telecommunications gross income. S.C. Code Ann. § 58-9-2220.
    - A. A franchise or consent fee for the installation or construction of physical facilities in public rights-of-ways. The maximum permissible fee is based on municipal population and ranges from \$100 for a population of 1,000 or less to \$1,000 for a population of more than 25,000. S.C. Code Ann. § 58-9-2230.

- Texas municipalities assess right-of-way fees as an average rate per access line. The rate is based on a formula applied by the Public Utilities Commission and is pegged to average municipal fees collected in 1998. Tex. Loc. Gov't Code ch. 283.
  - In Virginia, the state Department of Transportation annually calculates the Public Rights-of-way Use Fee as an average rate per access line. The average weights public highway miles at \$425 per mile and new installations at \$1 per linear foot. Va. Code § 56-468.1.
  - Michigan, as set forth in Public Act 48 (discussed *infra*).
- c. *In-kind compensation.* Most recent statutes prohibit municipalities from obtaining free or discounted telecommunications services or the preferential use of telecommunications facilities in exchange for granting right-of-way access.
- Colo. Rev. Stat. §§ 38-5.5-107(3), -108(2).
  - Fla. Stat. § 202.24(2).
  - Iowa Code § 480A.4.
  - Kan. Stat. Ann. §§ 12-2001(o)(5), 17-1902(h)(4).
  - Minn. Stat. § 237.163, subd. 7(d).
  - Mo. Rev. Stat. § 67.1842.3.
  - Neb. Rev. Stat. § 86-301(6).
  - N.D. Cent. Code § 49-21-27.
  - Ohio Rev. Code § 4939.03(A).
  - Or. Rev. Stat. § 221.515(3).
  - Tex. Loc. Gov't Code § 283.055(n).
  - Va. Code §§ 56-458.E, -462.E.
  - Some states permit in-kind compensation, subject to statutory constraints.
    - Arizona permits a political subdivision and a telecommunications licensee or franchisee to agree to an in-kind arrangement, but the costs of the in-kind facilities offset the provider's obligation to pay local transaction privilege taxes or linear foot charges (applicable to interstate services) and must be equal to *or* less than the taxes or charges. Ariz. Rev. Stat. § 9-582, subsec. D.
      - “The in-kind facilities . . . shall remain in possession and ownership of the political subdivision after the term of the existing license or franchise expires.” *Id.*
      - “[A] political subdivision shall not require a telecommunications corporation to provide in-kind services, make in-kind payments or pay a fee in addition to the fees [authorized in the act] as a condition of consent to use a highway to provide telecommunications services.” *Id.*
    - Washington permits cities and towns to obtain access to ducts, conduits, or related structures of a service provider, subject to conditions that include the payment of compensation sufficient to recover the provider's incremental costs. If the municipality allows the in-kind facilities to be used to provide service to the public, it must compensate the provider on the basis of fully allocated costs. Wash. Rev. Code § 35.99.070.

### 3. “Third Tier” Regulation,

- a. *Centralization of authority in a state agency.* One approach is to create a state agency or authority to collect the fees, disburse a share of the fee revenues to local governments, and displace or preempt fee collection as a local governmental function. Conceivably, this model could apply to other regulatory functions historically associated with franchises. For example, several states have transferred responsibility for dispute resolution from local administrative procedures or courts to state public utility commissions. See Ind. Code § 8-1-2-101(a); 2002 Mich. Pub. Acts 48, §§ 6(2)-(3), 7, 18.

The following statutes consolidate fee collection and disbursement functions in a state agency:

- Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, 35 Ill. Comp. Stat. ch. 635.
- Florida Communications Services Tax Simplification Act, Fla. Stat. § 202.10 et seq. See Fla. Stat. § 337.401.
- Michigan, under new Public Act 48 (discussed *infra*).

- b. *Unrelated permit conditions.* Some statutes prohibit local regulations that set requirements unrelated to right-of-way management or intrude upon matters committed to state or federal jurisdiction.

- An example is Florida: “A municipality or county may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services.” Fla. Stat. § 337.401(3)(g). See also *id.* § 337.401(3)(b).
- Texas and Kansas list specific matters that are exempt from local regulation. By way of example, the Texas statute provides: “Police power-based regulation of certificated telecommunications providers may not include activities that are governed by this chapter or are within the sole business discretion of the certificated telecommunications provider. . . . A municipality specifically may not impose regulations on certificated telecommunications providers that are not authorized by this chapter, including:
  - “(1) requirements that particular business offices be located in the municipality;
  - “(2) requirements for filing reports and documents with the municipality that are not required by state law to be filed with the municipality and that are not related to the use of a public right-of-way;
  - “(3) inspection of a provider’s business records except to the extent necessary to conduct an authorized review of the provider to ensure compliance with the access line reporting requirements of this chapter. . . ; and
  - “(4) approval of transfers of ownership or control of a provider’s business, except that a municipality may require that a provider maintain current point of contact information and provide notice of a transfer within a reasonable time.” Tex. Loc.

Gov't Code § 283.056(c). See also Kan. Stat. **A m.** §§ 12-2001(e)(5), (o), 17-1902(h).

- **Arizona** provides an exclusive list of matters that may be the basis for permit conditions:  
“As a condition of issuing a license or franchise to use the public highways to construct, install, operate and maintain telecommunications facilities, or a renewal thereof, a political subdivision may impose reasonable, competitively neutral and nondiscriminatory requirements on applicants which may include only:  
“1. Proof that the applicant has received a certificate of convenience and necessity from the Arizona corporation commission.  
“2. Public highway use requirements.  
“3. Mapping requirements.  
“4. Insurance, performance bonds, indemnification or similar requirements.  
“5. Enforcement and administrative provisions, consistent with this section.” Ariz. Rev. Stat. § 9-583, subsec. B.
- Mo. Rev. Stat. § 67.1836.1(4).
- Neb. Rev. Stat. § 86-301(2).
- S.C. Code Ann. § 58-9-2240.
- Wash. Rev. Code § 35.99.040(1)(a).
- **Michigan** prohibits permit conditions that are unrelated to right-of-way management. Mich. Comp. Laws § 484.252 (restated in 2002 Mich. Pub. Acts 48, § 15[4]).

- c. *Non-facilities-based providers.* Some statutes expressly state that non-facilities-based providers (e.g., telephone resellers) are not subject to permitting or fee requirements when they provide services to end-use customers located within a municipality.
- Fla. Stat. § 337.401(3)(c)1.a.(I).
  - Ohio Rev. Code § 4939.03(E).
  - See 2002 Mich. Pub. Acts § 8(5) (“The fee required under this section is based on linear feet occupied by the provider regardless of . . . whether the facilities are leased to another provider.”).
  - This is implicit in most statutory schemes. But cf. Tex. Loc. Gov't Code § 283.055(i), which shifts responsibility to pay fees from the wholesale provider of access lines to the resale provider that serves the end-use customer.

#### 4. Discriminatory Treatment.

In keeping with 47 U.S.C. § 253, most recent state enactments contain a general prohibition against discrimination and mandate competitive neutrality. To the extent that disparities relate to the fees assessed to different providers (some of which have historically been subject to negotiation), modifying the statutory fee standard as discussed in II.B.2 may provide more *uniformity* in treatment. Beyond that, it is somewhat less clear what has been done to equalize the treatment of various right-of-way users, particularly in light of the differences in regulation accorded to different technology sectors under federal law. This discussion attempts to highlight certain issues addressed in state legislation that implicate competitive neutrality.

- a. **Wireless services.** Several state statutes exempt wireless service from permit or fee obligations or otherwise differentiate wireless carriers from wireline providers on the ground that they do not physically occupy or **use** public rights-of-way.
- Several statutes exclude the airwaves, as used for wireless or cellular services, from the definition of public right-of-way.
    - Ind. Code § 8-1-2-101(b).
    - Iowa Code § 480A.2, subsec. 3.
    - Kan. Stat. Ann. §§ 12-2001(c)(8), 17-1902(a)(1).
    - 2002 Mich. Pub. Acts 48, § 2(j), (k).
    - Minn Stat. § 237.162, subd. 3.
    - Mo. Rev. Stat. § 67.1830(8)(a).
    - N.D. Cent. Code § 49-21-01, para. 16.
    - S.C. Code Ann. § 58-9-2230(D).
    - Tex. Loc. Gov't Code § 283.002(6).
  - Va. Code §§ 56-458(B), -462(B), exclude commercial mobile radio service providers from paying fees.
  - The tax collection schemes enacted by **Illinois** and **Florida**, which appear to have the rationalization of communications taxes as one of their objectives, explicitly apply to the gross revenues of wireless services. See also S.C. Code Ann. § 58-9-2220, which imposes a business license tax on retail telecommunications services, including mobile telecommunications services.
  - *Query:* Is it consistent with principles of nondiscrimination and competitive neutrality to exempt wireless providers from paying fees that are **uniformly** assessed to other facilities-based providers?
- b. **Cable services.** Some states exempt cable television franchises from regulatory statutes relating to right-of-way access.
- The following exempt cable services or operators by excluding them from the definitions of “telecommunications” or similar terms that trigger the statutes:
    - Ariz. Rev. Stat. § 9-581, para. 4.
    - Colo. Rev. Stat. § 38-5.5-102(3).
    - 35 Ill. Comp. Stat. § 635/10(b).
    - Iowa Code § 480A.2, subsec. 4.
    - Minn. Stat. § 237.162, subd. 4.
  - The following indicate that municipalities retain the ability to negotiate and implement cable franchise agreements and collect franchise fees as authorized by federal law, even though some of the parties’ rights and obligations with respect to right-of-way access may be statutorily modified:
    - Ind. Code § 8-1-2-101(d).
    - Mo. Rev. Code § 67.1830(5).
    - Ohio Rev. Code § 4939.03(D).
    - S.C. Code Ann. § 58-9-2210.
    - Wash. Rev. Code § 35.21.860(1)(d).

- **Florida** exempts cable franchising authority from the statutory right-of-way access provisions, but it applies the communications services tax to cable services instead of permitting municipalities to negotiate and collect cable franchise fees. Fla. Stat. § 337.401(3)(a)2.
  - A few statutes draw a distinction between the cable television and non-cable services provided by cable operators and subject only the non-cable services to new statutory right-of-way access and fee requirements.
    - **Michigan's** new law preserves the ability of municipal governments to enter into cable franchises and collect franchise fees based on cable television revenues (but not broadband modem revenues), but it requires cable television operators that provide telecommunications and information services to pay cumulative statutory right-of-way fees. 2002 Mich. Pub. Acts 48, §§ 8(11)-(12), 13(6), 16.
    - Similarly, the **Arizona** statute provides:
 

“A political subdivision may not discriminate against a cable operator in its provision of telecommunications services if that cable operator complies with requirements applicable to telecommunications corporations. Nothing in this subsection limits the authority of any political subdivision to license cable systems and to establish conditions on those licenses consistent with federal law.” Ariz. Rev. Stat. § 9-582, subsec. G.
- c. **“Grandfathered” Franchises.** Most states that have enacted new models of right-of-way regulation provide some type of exemption for already existing local ordinances or contractual arrangements between providers and local governments. These run the gamut from statutes that exempt all franchises for the remaining life of the agreement, see. e.g., Iowa Code § 480A.6, to those that provide incentives and disincentives to induce the parties to convert to the new system voluntarily. An example of the latter is **Florida**, which allows a local government either to participate in the state and local communications services tax system or to continue to collect its own permit fees. If it retains its own fee structure, it may collect no more than its management costs and may not charge any provider more than \$100. Fla. Stat. § 337.401(3)(c)1.a.(1).
1. *Query:* Is it discriminatory to enact legislation to “level the playing field” with respect to right-of-way access, but at the same time exempt existing franchises with remaining terms that may extend years into the future? Are there legal obstacles that would prevent state legislatures from reforming existing franchises?
  2. *Statewide franchises.* A variation of this issue is that some states historically granted telephone companies a general statutory right to use the public highways for their facilities. This can present difficult legal issues if a state later adopts legislation or implements policies that retract or modify the rights that the telephone company claims it secured when it originally constructed the facilities and began offering public service.<sup>4</sup> A few states acknowledge these claims in recent legislation:

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<sup>4</sup> See Russell v Sebastian, 233 U.S. 195; 34 S. Ct. 517; 58 L. Ed. 912 (1914); TCG Detroit v City of Dearborn, 206 F 3d 618, 625-26 (6th Cir. 2000).

- 2 . **Arizona** and **Washington** exempt a provider with an existing statewide franchise from certain requirements:
  2. Ariz. Rev. Stat. § 9-582, subsec. A, para. 2, exempts a statewide franchise holder from obtaining a license or franchise from the political subdivision. See also Ariz. Rev. Stat. §§ 9-582, subsec. E, -583, subsec. F. The statute further provides: “A political subdivision may distinguish between a telecommunications corporation [with a statewide franchise] and other telecommunications corporations to a Justifiable extent based on differences in legal rights.” Id. § 9-583, subsec. E.
  2. Wash. Rev. Code § 35.99.030 provides a similar exemption from the master permit requirement.
- 2 . The new **Michigan** statute indicates that providers claiming statewide franchises are subject to the fee and permitting provisions. 2002 Mich. Pub. Acts 48, § 5(2).

- d. Exclusive *use* provisions. Some statutes prohibit a provider from securing exclusive rights or privileges.
  - Kan. Stat. Ann. § 12-2001(e)(3).
  - Mo. Rev. Stat. § 67.1842.1(5).
  - Tex. Loc. Gov’t Code § 283.052(a)(1).

### C. Other Statutory Provisions that Facilitate Right-of-way Access and Administration

This survey has noted a number of statutory provisions that do not directly redress competitive imbalances or remove entry barriers. However, they may facilitate right-of-way access on a fair and pro-competitive basis by improving the uniformity and clarity of standards and the efficiency of local administration. By balancing legitimate concerns of interested stakeholders, this type of provision may give assurance that perceived problems will be resolved and reduce the chances that disputes will end in litigation.

The following notes some practices that may promote a more efficient right-of-way process:

1. *Provider recovery of fees.* **If** there is some statutory assurance that providers will recover the fees they pay, they may be less disposed to dispute them. The ability to recover fees assessed on a uniform basis may mitigate any adverse effect on competition.
  - Some states indicate that the provider has a right to recover the fees through the rate structure it charges to its customers.
    - o 220 Ill. Comp. Stat. § 5/13-511.
    - o Iowa Code § 476.6, subsec. 24.
    - o N.D. Cent. Code § 49-21-30.
  - Others provide for a direct pass-through of the fees to the provider’s customers in the form of a line item on customer bills
    - o Kan. Stat. **Am.** § 12-2001(r).
    - o Mo. Rev. Stat. § 67.1840.3.
    - o S.C. Code Ann. § 58-9-2270.
    - o Va. Code 56-468.1.G.

2. *Restoration of right-of-way after construction or excavation.* Several states have enacted provisions imposing an explicit obligation on a right-of-way user to restore rights-of-way to their former condition. Most statutes include enforcement provisions that allow the municipality to do the restoration work and charge the user for its costs. **As** noted below, a few make provisions for situations in which complete restoration to the right-of-way's preexisting condition is not feasible.

- Fla. Stat. § 337.402.
- Ind. Code § 8-1-2-101(b).
- Kan. Stat. Ann. § 17-1902(k).
- Mich. Comp. Laws § 484.2251(3) (restated and amplified in 2002 Mich. Pub. Acts 48, § 15[3], [5]).
- Minn. Stat. § 237.163, subd. 3. The statute also allows “a degradation fee in lieu of restoration to recover costs associated with a decrease in the useful life of the public right-of-way caused by the excavation.” *Id.* subd. 3(b).
- Mo. Rev. Stat. § 67.1834. The statute requires the permittee “to guarantee for a period of four years the restoration of the right-of-way in the area where such right-of-way user conducted excavation and performed the restoration,” *id.* § 67.1834.1, but it prohibits the political subdivision from recovering compensation for degradation in the permit fee, *id.* § 67.1830(5).
- Ohio Rev. Code § 4939.03(C).
- Va. Code § 56-467.

3. *Maps of Right-of-Way Facilities.* Maintaining maps showing the location of existing facilities can be important to local governments that administer right-of-way permits and to providers seeking to install new facilities.<sup>5</sup> On the other hand, retrofitting map obligations on providers that have already maintained facilities in place for decades can be an expensive proposition. Due to trenching, repaving, grading, and other road work that changes the relative location of facilities, maps of existing facilities are not always reliable sources of information and should not preempt the need for “one call” centers to locate underground facilities before excavation. In addition, mapping requirements that vary in format, information, and medium from one jurisdiction to another can create unnecessary barriers.

- The **Minnesota** statute authorizes local government units to require the information necessary to develop a right-of-way mapping system. Minn. Stat. 5237.162, subd. 8(6)-(7) (definition of authority to manage the public right-of-way). For an elaboration of the **Minnesota** mapping requirements, see applicable rules promulgated by the Public Utilities Commission to establish statewide construction standards. Minn. R. 7819.4000, .4100.
- See also Ariz. Rev. Stat. § 9-583, subsec. B.

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<sup>5</sup> Providers have concerns about disclosing competitively sensitive information to governmental entities that are unable to protect such information from mandatory public disclosure. This also raises network safety and homeland security issues. To counter the risks of a possible disclosure, some statutes provide for enhanced protection of confidential information. In its statute, **Florida** maintains the confidentiality of “proprietary confidential business information,” Fla. Stat. § 202.195, although this excludes “schematics indicating the location of facilities for a specific site that are provided in the normal course of the local governmental entity's permitting process,” *id.* § 202.195(2). See also Kan. Stat. Ann. § 12-2001(p); 2002 Mich. Pub. Acts § 6(5); Neb. Rev. Stat. § 86-301(7)

4. *Indemnification*. A couple of statutes include a detailed provision setting forth the terms by which telecommunications providers must agree to indemnify the municipality.
- Kan. Stat. AM. §17-1902(q). This statute (as well as others) permits a city to require a performance bond as a means of insuring “appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.” *Id.* §17-1902(n)(5).
  - Tex. Loc. Gov’t Code § 283.057.

### III. MICHIGAN BROADBAND MODEL

#### A. An Overview.

Public Acts 48, 49, and 50 of 2002 are a tie-barred package of legislation that establishes a linkage between Michigan’s dual policy objectives of facilitating access to local rights-of-way for communications facilities and promoting a build-out of broadband facilities and services.

1. Public Act 48, the Metropolitan Extension Telecommunications Rights-of-way Oversight (METRO) Act, establishes a uniform system for regulating access to, and fees paid for the use of, public right-of-ways. This piece of the legislative package is the most relevant to this discussion.
2. Public Act 49, the Michigan Broadband Development Authority Act, establishes a governmental bonding authority to raise capital and provide financing for the statewide development of a broadband infrastructure.
3. Public Act 50 provides tax credits. The first type of credit acts as an incentive for providers to make capital investments in broadband facilities. The second provides a measure of compensation to providers for the right-of-way maintenance fees that they will incur under the METRO Act. (The METRO Act prohibits any increase in rates to recover the fees.) Both credits reduce the intangibles property tax imposed on telecommunications companies under Mich. Comp. Laws 207.1 et seq.

#### B. Promoting Competition through Right-of-way Reform.

The METRO Act addresses existing competitive issues (as outlined in Section II), both by introducing new innovations and by borrowing liberally from, and building upon, some of the “best practices” in prior state legislation:

##### 1. “Third Tier” Regulation

The METRO Act establishes a centralized system of fee collection that applies uniformly to facilities-based communications carriers using rights-of-way in Michigan. It continues to delegate actual permitting decisions to local units of government, subject, however, to uniform standards that

circumscribe permitting discretion and provide means of effective redress for erroneous or anti-competitive decisions.

- The METRO Act creates the METRO Authority as an autonomous state agency. Implementation of the METRO Act is a shared responsibility of the METRO Authority and the state Public Service Commission.
- Broadly speaking, the METRO Authority’s role is administrative—it assesses and collects right-of-way maintenance fees and disburses them to each eligible municipal government (in accordance with an allocation formula set forth in sections 10-12 of the METRO Act).
  - Municipalities may not impose additional or inconsistent fees. METRO Act § 4(1).
  - The fee proceeds disbursed by the METRO Authority “shall be used by the municipality solely for rights-of-way related purposes.” METRO Act § 10(4).
- The Commission’s role is primarily adjudicative (mediation, dispute resolution, enforcement).

## 2. Permitting Procedure,

- a. *Time limits.* *The period for local governments to resolve applications for local permits is 45 days. METRO Act § 15(3). The METRO Act further prohibits the unreasonable denial of a permit. Id.*
- b. *Streamlined enforcement.* *The METRO Act provides a fast-track dispute resolution process to be administered by the Commission.*
  - Mediation is the initial step to resolve disputes relating to either (i) the local permit application or (ii) right-of-way construction activities (after a permit is issued). METRO Act §§ 6(2), 7.
    - If the dispute concerns a permit application, “[t]he [C]ommission may order that the permit be temporarily granted pending resolution of the dispute.” METRO Act § 6(2).
    - In either type of dispute, the Commission appoints a mediator within seven days of a request for mediation.
    - The mediator has 30 days to issue recommendations.
    - Parties have 30 days to appeal the mediation recommendations to the Commission for review.
    - The Commission has 60 days to decide the dispute, subject to a 30-day extension, if the interested parties agree.
    - If the dispute concerns post-permit construction activities, “[t]he [C]ommission shall issue its determination within 15 days from the date of the request [to review the mediation recommendations] if a municipality demonstrates that the public health, safety, and welfare require a determination before the expiration of the 60 days.” METRO Act § 7.
  - Other complaints arising under the METRO Act are subject to Section 18, which incorporates procedures, deadlines, and remedies comparable to complaints filed under the Michigan Telecommunications Act. See Mich. Comp. Laws § 484.2203.

- The Commission issues a final order after a contested case hearing within 180 days (subject to a 30-day extension if the principal parties agree). Mich. Comp. Laws § 484.2203(11).
- The Michigan Telecommunications Act provides emergency relief procedures. Mich. Comp. Laws § 484.2203(2)-(6). See also METRO Act § 6(3).

### 3. Fees

*The METRO Act imposes a uniform fee system and prohibits local governments from imposing inconsistent fees. The fee provisions incorporate legislative findings regarding the reasonable, actual costs of providing right-of-way access, including administrative costs. The fee structure forecloses the collection of rent for the property value of the rights-of-way.*

- Providers pay, directly to the municipal government, a nonrecurring \$500 fee with each permit application. METRO Act § 6(4). This obligation is subject to the following exceptions:
  - A provider holding a permit issued under the repealed provisions of the Michigan Telecommunications Act, Mich. Comp. Laws § 484.2251 et seq., need not apply for a new permit. METRO Act § 5(1).
  - A provider claiming a statewide franchise is not required to pay the fee if it applies for a permit in accordance with Section 5(3) of the METRO Act.
  - A cable television operator need not apply for a new permit to provide information or telecommunications services if it holds a cable franchise that is comparable to a METRO permit. METRO Act § 8(11).
- Providers using the rights-of-way pay to the METRO Authority an annual maintenance fee of 5¢ per linear foot in most cases. METRO Act § 8.
  - Fees paid by a provider are subject to a cap based on Ameritech's average fees paid per access line.
  - As set forth in Section 8(21) of the METRO Act, a provider may **seek** a waiver of fees for up to ten years as an incentive to invest in telecommunications service in underserved areas.
  - A 40% fee discount is available to provide an incentive for several providers to enter into cooperative arrangements to share rights-of-way and coordinate construction activities. METRO Act § 9.
  - Different fee provisions apply to cable television operators that provide telecommunications or information services (including broadband Internet access). Their annual maintenance fee obligation is 1¢ per linear foot (cumulative to cable franchise fees owed to municipal governments). METRO Act § 8(11). The fee obligation can also be satisfied by making qualifying broadband investments. *Id.* § 8(12).
- Provider complaints concerning fee assessments issued by the METRO Authority are "subject to a de novo review by the [C]ommission." METRO Act § 17.

#### 4. Discriminatory Practices.

- a. *Expansive scope of permit and fee provisions.* The METRO Act addresses discriminatory practices by expanding its scope to encompass more right-of-way users and by prescribing uniform standards of conduct that apply to competing providers.
  - The METRO Act applies to traditional telephone companies that have historically claimed immunity from right-of-way permits or fees under statewide franchises.
  - Municipal governments or utilities, educational institutions, and **energy** utilities that market telecommunications services to the public are subject to the METRO Act. METRO Act § 8(18)-(20). A local government may not grant preferential treatment to a municipally owned telecommunications or broadband provider or discriminate against privately owned providers. Id. § 14.
- b. *Grandfathering.* Although Section 4 of the METRO Act preserves rights under permits issued prior to the effective date of the act, municipalities are ineligible to participate in the fee mechanism unless they conform their existing fee arrangements to the act. METRO Act § 8. Maintaining eligibility to receive funding should act as an incentive for each municipality to amend inconsistent local laws and manage its rights-of-way in compliance with the act.

#### C. Other Provisions.

1. *Provider recovery of fees.* Providers may not raise their telecommunications rates to recover the fees incurred under the METRO Act. The tax credit provision for right-of-way maintenance fees in Public Act 50 is “the sole method of recovery for the costs required under this act.” METRO Act § 8(17). A provider of basic local exchange service is eligible for the credit only if it is not already over collecting its total service long run incremental cost. Id. § 8(14), (16).
2. *Restoration of right-of-way after construction or excavation.* Section 15(5) of the METRO Act requires providers to restore right-of-way construction or excavation sites to their preexisting condition.
3. *Maps of right-of-way facilities.* The METRO Act contains provisions that will enable municipalities to develop and maintain maps of right-of-way facilities. METRO Act § 6(5), (7)-(8).
4. *Standardized application forms.* The METRO Act adopts standardized application and permit forms as previously developed by the Commission. METRO Act § 6(1). Section 6(1)-(2) further provides that the applicant and the municipality may agree on additional information requests and different permit provisions. The current version of the Commission’s standardized application package appears on its web site, at <http://cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.