

CHAPTER 115: TELECOMMUNICATIONS PROVIDERS

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§ 115.01 PURPOSE.

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and to exercise reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts

of 2002), being M.C.L.A. §§ 484.3101 et seq., and other applicable law, and to ensure that the city qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 198, passed 12-16-02)

§ 115.02 CONFLICT.

Nothing in this chapter shall be construed in such a manner as to conflict with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, or other applicable law.

(Ord. 198, passed 12-16-02)

§ 115.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), being M.C.L.A. §§ 484.3101 et seq., as amended from time to time.

AUTHORITY. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to the Act.

CITY. The City of Ferrysburg.

CITY COUNCIL. The City Council of the City of Ferrysburg or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the CITY COUNCIL.

CITY MANAGER. The City Manager or his or her designee.

M.P.S.C. The Michigan Public Service Commission in the Department of Consumer and Industry Services; M.P.S.C. shall have the same meaning as the term "Commission" in the Act.

PERMIT. A nonexclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the city for its telecommunications facilities.

PERSON. An individual, corporation, partnership, association, governmental entity, or any other legal entity.

PUBLIC RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, alley, easement or waterway. PUBLIC RIGHT-OF-WAY does not include a federal, state, or private right-of-way.

TELECOMMUNICATION FACILITIES or FACILITIES. The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can

generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. TELECOMMUNICATION FACILITIES or FACILITIES do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in § 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, and service provided by any wireless, two-way communication device.

TELECOMMUNICATIONS PROVIDER, PROVIDER and TELECOMMUNICATIONS SERVICES. As defined in § 102 of the Michigan Telecommunications Act, 1991 PA 179, being M.C.L.A § 484.2102. TELECOMMUNICATION PROVIDER does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in § 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this chapter only, a PROVIDER also includes all of the following:

- (1) A cable television operator that provides a telecommunications service.
- (2) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- (3) A person providing broadband internet transport access service.

(Ord. 198, passed 12-16-02)

§ 115.04 PERMIT REQUIRED.

(A) Permit required. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the city for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.

(B) Application. Telecommunications providers shall apply for a permit on an application form approved by the M.P.S.C. in accordance with the Act. A telecommunications provider shall file the application in triplicate with the City Clerk. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with the Act.

(C) Confidential information. If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from Michigan's Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being M.C.L.A. §§ 15.231 et seq., as amended, pursuant to § 6(5) of the Act, being M.C.L.A. § 484.3106(5), the telecommunications provider shall prominently so indicate on the face of each map.

(D) Application fee. Except as otherwise provided by the Act, an application shall be accompanied by a one-time nonrefundable application fee in the amount established from time to time by resolution of the City Council.

(E) Additional information. The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the city and the applicant cannot agree on the requirement of additional information requested by the city, the city or the applicant shall notify the M.P.S.C. as provided in § 6(2) of the Act, being M.C.L.A. § 484.3106(2).

(F) Previously issued permits. Pursuant to § 5(1) of the Act, being M.C.L.A. § 484.3105(1), authorizations or permits previously issued by the city under § 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, being M.C.L.A. §§ 484.2101 et seq., as amended, and authorizations or permits issued by the city to telecommunications providers prior to the 1995 amendment of § 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.

(G) Existing providers. Pursuant to § 5(3) of the Act, being M.C.L.A. § 484.3105(3), within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the city as of such date, that has not previously obtained authorization or a permit under § 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, as amended, shall submit to the city an application for a permit in accordance with the requirements of this chapter. Pursuant to § 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the application fee required under subsection (D) of this section. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority for good cause, as provided in § 5(4) of the Act, being M.C.L.A. § 484.3105(4).

(Ord. 198, passed 12-16-02)

§ 115.05 ISSUANCE OF PERMIT.

(A) Approval or denial. The authority to approve or deny an application for a permit is delegated to the City Manager. Pursuant to § 15(3) of the Act, being M.C.L.A. § 484.3115(3), the City Manager shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit in accordance with § 115.04 for access to a public right-of-way within the city. The City Manager shall notify the M.P.S.C. when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

(B) Form of permit. If an application for permit is approved, the City Manager shall issue the permit in the form approved by the M.P.S.C. with or without additional or different permit terms, in accordance with §§ 6(1), 6(2) and 15 of the Act, being M.C.L.A. § 484.3106(1) and (2) and § 484.3115.

(C) Conditions. Pursuant to § 15(4) of the Act, being M.C.L.A. § 484.3115(4), the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and use of the public right-of-way.

(D) Bond requirement. Pursuant to § 15(3) of the Act, being M.C.L.A. § 484.3115(3), and without limitation on subsection (C) of this section, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. 198, passed 12-16-02)

§ 115.06 CONSTRUCTION/ENGINEERING PERMIT.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the city without first obtaining a construction or engineering permit as required under the city code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. 198, passed 12-16-02)

§ 115.07 CONDUIT OR UTILITY POLES.

In accordance with the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. 198, passed 12-16-02)

§ 115.08 ROUTE MAPS.

Pursuant to § 6(7) of the Act, being M.C.L.A. § 484.3106(7), a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the city, submit route maps showing the location of the telecommunications facilities to both the M.P.S.C. and to the city. The route maps should be in electronic format unless and until the M.P.S.C. determines otherwise, in accordance with § 6(8) of the Act, being M.C.L.A. § 484.3106(8).

(Ord. 198, passed 12-16-02)

§ 115.09 REPAIR OF DAMAGE.

A telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the city, as authorized by a permit, shall promptly repair all damage done to the street surface

and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. 198, passed 12-16-02)

§ 115.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

In addition to the non-refundable application fee paid to the city set forth in § 115.04(D), a telecommunications provider with telecommunications facilities in the city's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to § 8 of the Act, being M.C.L.A. § 484.3108.

(Ord. 198, passed 12-16-02)

§ 115.11 MODIFICATION OF EXISTING FEES.

In compliance with the requirements of § 13(1) of the Act, being M.C.L.A. § 484.3113(1), the city hereby modifies, to the extent necessary, fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and use of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of § 13(4) of the Act, being M.C.L.A. § 484.3113(4), the city also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the city's boundaries, so that those providers pay only those fees required under § 8 of the Act, being M.C.L.A. § 484.3108. The city shall provide each telecommunications provider affected by the fee a copy of this chapter, in compliance with the requirement of § 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the city's policy and intent, and upon application by a provider or discovery by the city, shall be promptly refunded as having been charged in error.

(Ord. 198, passed 12-16-02)

§ 115.12 SAVINGS CLAUSE.

Pursuant to § 13(5) of the Act, being M.C.L.A. § 484.3113(5), if § 8 of the Act, being M.C.L.A. § 484.3108, is found to be invalid or unconstitutional, the modification of fees under § 115.11 above shall be void from the date the modification was made.

(Ord. 198, passed 12-16-02)

§ 115.13 USE OF FUNDS.

Pursuant to § 10(4) of the Act, being M.C.L.A. § 484.3110(4), all amounts received by the city from the Authority shall be used by the city solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the city from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the city under Act No. 51 of the Public Acts of 1951, being M.C.L.A. §§ 247.651 et seq.

(Ord. 198, passed 12-16-02)

§ 115.14 ANNUAL REPORT.

Pursuant to § 10(5) of the Act, being M.C.L.A. § 484.3110(5), the City Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

(Ord. 198, passed 12-16-02)

§ 115.15 CABLE TELEVISION OPERATORS.

Pursuant to § 13(6) of the Act, being M.C.L.A. § 484.3113(6), the city shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. 198, passed 12-16-02)

Cross-reference:

For provisions regarding cable television, see Ch. 113

§ 115.16 EXISTING RIGHTS.

Pursuant to § 4(2) of the Act, being M.C.L.A. § 484.3104(2), except as expressly provided herein with respect to fees, this chapter shall not affect any existing rights that a telecommunications provider or the city may have under a permit issued by the city or under a contract between the city and a telecommunications provider related to the use of the public rights-of-way.

(Ord. 198, passed 12-16-02)

§ 115.17 COMPLIANCE.

The city declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the Act, and the provisions of this chapter should be construed in such a manner as to achieve that purpose. The city shall comply in all respects with the requirements of the Act, including but not limited to the following:

(A) Exempting certain route maps from disclosure consistent with the Act and state law as provided in § 115.04(C);

(B) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 115.04(F);

(C) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with § 115.05(A);

(D) Notifying the M.P.S.C. when the city has granted or denied a permit, in accordance with § 115.05(A);

(E) Not unreasonably denying an application for a permit, in accordance with § 115.05(A);

(F) Issuing a permit in the form approved by the M.P.S.C., with or without additional or different permit terms, as provided in § 115.05(B);

(G) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and use of the public right-of-way, in accordance with § 115.05(C);

(H) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with § 115.05(D);

(I) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with § 115.06;

(J) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this chapter, in accordance with § 115.11;

(K) Submitting an annual report to the Authority, in accordance with § 115.14; and

(L) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 115.15.

(Ord. 198, passed 12-16-02)

§ 115.18 RESERVATION OF POLICE POWERS.

Pursuant to § 15(2) of the Act, being M.C.L.A. § 484.3115(2), this chapter shall not limit the city's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the city's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. 198, passed 12-16-02)

§ 115.19 AUTHORIZED CITY OFFICIALS.

The City Manager or his or her designee is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this chapter as provided by the city code.

(Ord. 198, passed 12-16-02)

§ 115.20 MUNICIPAL CIVIL INFRACTION.

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to such civil infraction fines and costs as provided in this code. Nothing in this section shall be construed to limit the remedies available to the city in the event of a violation by a person of this chapter or a permit.

(Ord. 198, passed 12-16-02)