



POLICY

Road Commission of Kalamazoo County Permit Policy for Safely Allowing Limited Telecommunication and Video Service WIRED Facilities, Wired Support Structures, and Utility Poles Access Within the County Road Right-of-Ways

WHEREAS, the Board of County Road Commissioners of the County of Kalamazoo (the “Board” or “Road Commission”) is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law or delegated by the Kalamazoo County Board of Commissioners; and

WHEREAS, real property interests—including easements, various fees, and the right to regulate related to the use of public right-of-ways within the county road system—have been vested in the Road Commission to be held in trust for the benefit of the public; and

WHEREAS, the Road Commission intends to discharge its obligations as trustee of those certain real property interests in a manner that benefits and protects the public generally, and any adjacent landowners specifically; and

WHEREAS, Article 7, §29 of the Michigan Constitution of 1963 reserves to county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and

WHEREAS, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables, poles or like structures upon, over or under a county right-of-way including any improved highway or bridge; and

WHEREAS, MCL 224.19b (1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and

WHEREAS, MCL 224.19b(2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and

WHEREAS, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and

WHEREAS, communications technologies are constantly evolving, resulting in the potential for proliferation of communication service facilities within the public right-of-ways which carry the potential, if not appropriately managed, to jeopardize the safety and convenience of the public; and

WHEREAS, telecommunication and video service providers seeking to install and operate wired facilities, wired support structures, and utility poles within county highway right-of-ways to meet demand for such service, gain a pecuniary profit therefrom; and

WHEREAS, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of the public right-of-ways under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and

WHEREAS, the public right-of-ways under the Road Commission's jurisdiction are used by and useful to private or public enterprises including telecommunication and video service wired infrastructure providers and others engaged in providing wired telecommunication and video services to citizens, institutions, and businesses that are served by the county highway system; and

WHEREAS, the right to access and/or occupy portions of such public right-of-ways for limited times, for the business of providing wired telecommunication or video services is a valuable economic privilege; and

WHEREAS, beneficial competition between providers of wired telecommunication and video services can be furthered by the Road Commission's consent to locate within and for rights to use the public right-of-ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, the Applicant is a private or public enterprise engaged in installing facilities related to and/or providing various wired telecommunication and video services; and

WHEREAS, the Road Commission will grant its consent pursuant to its constitutional and statutory authority to manage and control its public right-of-ways, and will issue a permit to a wired services provider in consideration of the terms and conditions set forth herein:

1. Purposes

The purposes of this Policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of wired telecommunication and video services via the preceding and following statements of interest:

- 1.1. Establish a local policy concerning wired telecommunication and video services for use of the public right-of-ways that is consistent with MCL 224.19b, and also serves the Road Commission's statutory mandate to make the right-of-ways under its jurisdiction safe for public travel;
- 1.2. The Road Commission specifically reserves its right to alter, amend and adjust this policy where public safety or convenience requires on a per application basis;
- 1.3. Establish a local policy that promotes beneficial competition between wired telecommunication and video services providers on non-discriminatory and competitively neutral terms and conditions; and that ensures that the Road Commission retains the authority and ability to act to protect the public safety and welfare in the face of multiple rapidly-changing industries, including the wired communication and video service industry, that are placing increasing demand on public property and resources;
- 1.4. Consistent with constitutional, statutory and administrative regulatory mandate, establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public right-of-ways by wired telecommunication and video service providers and their respective facilities and licenses;
- 1.5. Consistent with constitutional, statutory and administrative regulatory mandate, permit and manage reasonable access to the public right-of-ways under the jurisdiction of the Road Commission for wired telecommunication and video service purposes on a competitively neutral basis, to the extent required by law;
- 1.6. Consistent with constitutional, statutory and administrative regulatory mandate, conserve the limited physical capacity of the public right-of-ways held in trust for the benefit of the public by the Road Commission, and over which the Road Commission shares jurisdiction with other governmental entities;
- 1.7. Assure that the Road Commission's current and ongoing actual costs of granting and regulating access to and use of its public right-of-ways are fully paid by the persons seeking such access and causing such costs;
- 1.8. Secure fair and reasonable compensation to the Road Commission and the residents of Kalamazoo County, in a nondiscriminatory manner, for permitting use of the public right-of-ways;
- 1.9. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;
- 1.10. Assure that all persons or entities providing wired telecommunication and video services within public right-of-ways in the county highway system comply with all state, federal and local laws and administrative rules and regulations;

- 1.11. Enable the Road Commission to manage its obligations to the public generally, and adjacent landowners specifically, consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- 1.12. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:
 - 1.12.1. Wired telecommunication and video facilities, associated wired support structures and utility poles are installed and maintained within public right-of-ways under the jurisdiction of the Road Commission in such manner and at such points so as not to unreasonably inconvenience the public use of the public right-of-ways or to adversely affect the public safety and welfare;
 - 1.12.2. Consistent with constitutional, statutory and administrative regulatory mandates, all wired telecommunication and video service providers using the right-of-ways under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the all costs, fees, expenses and damages incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of the facilities of such users. Further, that insurance and bonding be secured to assure that such defense, reimbursement and indemnity is available.

2. Definitions

- 2.1. “Person” means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.
- 2.2. “Permit” or “right-of-way permit” as used herein means the Road Commission’s legal authorization, terminable as defined in the permit, to use a particular, discrete, and limited portion of the public right-of-way to construct, operate, or repair a wired support structure, wired facility, or utility pole, including any permit special terms and conditions. The term “permit” or “right-of-way permit” shall not mean or include:
 - 2.2.1. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable county, city, village or township required by state or local law;
 - 2.2.2. Any other permit, authorization or agreement required in connection with operations on public streets or property.
 - 2.2.3. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by statute or by the right-of-way permit.
- 2.3. “Project” means a permit application which is submitted by one applicant as a package for work similar in nature to be accomplished in one year along one road., or a permit application which is submitted by one applicant as a package for a minor amount of

work of a similar nature along contiguous road segments to be accomplished in one year.

- 2.4. "Routine maintenance or repair work" means work that does not impact travel lanes or the road shoulder for more than one day.
- 2.5. "Wired provider," "wired infrastructure provider," or "provider" means either a "telecommunication provider" or a "video service provider." See MCL 224.19b (13) (a); MCL 484.2102; MCL 484.3301.
 - 2.5.1. Telecommunication provider means a person that for compensation provides 1 or more telecommunication services. Telecommunication provider does not include a provider of commercial mobile service. See MCL 224.19b (13) (a) (i); MCL 484.2102.
 - 2.5.2. Video service provider means a person who provides of video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet. See MCL 224.19b (13) (a) (ii); MCL 484.3301.
- 2.6. "Telecommunication services" includes regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage. A telecommunication service is not a public utility service.
- 2.7. "Wired facility" or "wired infrastructure" means any physical structure, materials, or appurtenance related to the delivery or establishment of services provided by a telecommunications or video service provider including, but not limited to, wired support structures or utility poles.
- 2.8. "Wired services" means those services provided by a telecommunications or video service provider through the use, in whole or in part, of a cable, fiber optic cable, or similar device.

3. Policy Guidelines

The administration of this Policy shall be governed by the following wired provider policy guidelines:

- 3.1. The Road Commission supports efforts to establish an open, competitive marketplace for wired telecommunication and video services that also serves the Road Commission's statutory mandate to promote safety and convenience in the use of public right-of-ways under its jurisdiction. The Road Commission promotes and encourages competition for wired telecommunication and video services that make the latest and best technology available and keep service prices affordable for all

county residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all wired telecommunication and video services providers and the preservation of local authority over matters of local impact.

- 3.2. The Road Commission recognizes that to balance the needs and interests of the public in the management of the right-of-ways together with the desire of the wired telecommunication and video services industries to access such right-of-ways, facilities supporting wired services may be integrated into the right-of-ways in conformity principally with community standards, also taking into account industry standards and best practices. Guidelines identifying community standards together with an understanding of industry standards and best practices may be incorporated into the terms and conditions of the Road Commission's right-of-way permit and permit process and may change from time to time, in the Road Commission's sole judgment and discretion.
 - 3.2.1. The Road Commission will manage access to the public right-of-ways for wired telecommunication and video services providers in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for use of the public right-of-ways under the jurisdiction of the Road Commission.
 - 3.2.2. Right-of-way permits for location of wired facilities will be managed to preserve the integrity of the county highway system's infrastructure, ensure efficient use of the property under the jurisdiction of the Road Commission, and ensure compliance with state, federal and local law.
 - 3.2.3. In order to effectively manage and regulate the use of public right-of-ways under the Road Commission's jurisdiction in the best interests of the public, it is necessary for the Road Commission to reserve and exercise all proprietary, legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any way to limit the proprietary, discretionary, administrative or legislative authority of the Road Commission and its officials as respects the management and use of the Road Commission's public right-of-ways or in respect to the granting, delaying, or denying any right-of-way permit.

4. General Provisions

- 4.1. No provider shall install, construct, or otherwise place within public right-of-way under the jurisdiction of the Road Commission any wired facilities except pursuant to the provisions of this Policy.
- 4.2. A provider must obtain a right-of-way permit under this Policy from the Road Commission prior to constructing any wired telecommunication or video service facilities within a right-of-way under the jurisdiction of the Road Commission. The

fact that a particular permitted wired facility may be used for multiple purposes does not obviate the need to obtain a permit for such purposes unless applicable federal or state law prohibits the Road Commission from requiring such additional permit or permits. No permit shall become effective without the grantee signing an acceptance of the permit.

- 4.3. A provider must provide a complete written right-of-way permit application on a form prescribed by the Road Commission, along with all requested supporting documentation. As part of each application, the provider must submit detailed engineering plans directly related to work in the right-of-way by that provider as a condition of or in connection with issuing a permit. Plans shall be drawn on 24 inches x 36 inches sheets and to a scale of not smaller than (1 inch =50 feet) horizontal and (1 inch =5 feet) vertical. To include a profile schematic.
- 4.4. If a right-of-way permit is granted pursuant to this Policy, the provider must agree to abide by the terms and conditions imposed by the permit and any permit special terms and conditions.
- 4.5. A right-of-way permit under this Policy shall not convey equitable or legal title to the public right-of-ways. The right granted is only the right to occupy those portions of the public right-of-way to which the Road Commission has the right to grant access, for the purposes and the time period stated in the permit, and the right may not be subdivided or subleased. A right-of-way permit shall not grant a vested right for any wired telecommunication or video service facilities to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the Road Commission. The facility therein shall be removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public interest as determined by the Road Commission.
- 4.6. A wired telecommunication or video services provider shall immediately (subject to seasonal work restrictions) restore, at its sole expense, in a manner approved by the Road Commission, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the wired facilities to a reasonably equivalent or better condition as that which existed prior to the disturbance. In the event that the wired telecommunication or video services provider, or its contractors or subcontractors, fail to make such repair within 60 calendar days or as otherwise determined by the Road Commission, the Road Commission may make the repair and the wired services telecommunication or video provider shall pay the costs the Road Commission incurs for such repair.
- 4.7. No reference herein, or in any right-of-way permit under this Policy, shall be deemed to be a representation or guarantee by the Road Commission that its interest or other right to control the use of such property is sufficient to permit its use for such purposes,

and a permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.

- 4.8. Before any right-of-way permit will be issued, the provider must demonstrate that it has obtained the necessary permits and/or consent of all units of state, local or federal government vested by law with the authority to require and grant permits and/or consent.

5. Fees and Costs

- 5.1. To the full extent permitted by law, recovery of all actual Road Commission costs related to the issuance of a right-of-way permit will be charged to a provider related to its installation and maintenance of all wired telecommunication and video service facilities in the right-of-way. Any such permit fee shall be approved by the Board of County Road Commissioners.
- 5.2. The Road Commission shall charge one permit fee of the provider for installation per project.
 - 5.2.1. The Road Commission will adopt separate fee schedules for issuing annual and emergency permits that reflect the actual administrative burden of issuing an annual permit for routine maintenance or repair work or emergency repairs.
 - 5.2.2. The provider shall obtain a (single) yearly permit for performing routine maintenance or repair work, as defined in the permit, in a right-of-way.
 - 5.2.3. The provider shall obtain a (single) yearly permit for performing emergency repairs.
- 5.3. The Road Commission shall require the provider to provide a single security bond or right-of-way bond to secure the performance of the conditions of all permits issued that authorize the provider to construct, operate, maintain, or remove a wired telecommunication or video service facility or perform any other work anywhere within the right-of-way, as designated in the permits, of any road under the jurisdiction of the county road commission. The provider may produce either type of bond.
 - 5.3.1. Notwithstanding the limitation in this section requiring only one (1) security bond or right-of-way bond, if there is a claim made against the bond, the provider must provide the Road Commission with another security bond or right-of-way bond in order to continue working in that county. A bond required under this subsection must be from a state or federally regulated entity licensed to do business in this state.
 - 5.3.2. The Road Commission in its discretion may require that the provider, instead of providing a security bond or right-of-way bond, provide an irrevocable letter of credit issued by a state or federally regulated financial institution licensed to do business in this state to secure the performance of the conditions of all permits issued that authorize the provider to construct, operate, maintain, or remove a facility or perform

any other work anywhere within the right-of-way, as designated in the permits, of any road under the jurisdiction of the county road commission.

- 5.4. The Road Commission will not refuse a permit requested by a government entity for the installation of a wired facility owned by that government entity if security is given by the permittee or its contractor to the county road commission sufficient to insure restoration of the road and appurtenances to the road and the adjacent right-of-way to a condition reasonably equal to or better than that existing before that installation.
- 5.5. In addition to the security as required above, the provider shall maintain general liability insurance with minimum policy limits of \$2,000,000.00 per occurrence for property damage and \$2,000,000.00 per occurrence for bodily injury that apply to all claims, demands, suits, or causes of action arising in connection with or as a direct result of the provider's use and occupancy of a right-of-way under the jurisdiction of a county road commission. The provider must maintain insurance coverage in the amounts described above as long as its wired facilities occupy any portion of the right-of-way. Insurance must be placed with insurers authorized to conduct business within the state with a current A.M. Best's rating of no less than A minus VII.
- 5.6. To the full extent permitted by law, the Road Commission may adopt a schedule of civil fines that can be imposed on a provider that performs work in a right-of-way without obtaining a permit as required or that fails to maintain a security bond, right-of-way bond, or irrevocable letter of credit as required during construction work within the right-of-way. Any such civil fine shall be approved by the Board of County Road Commissioners.
- 5.7. Nothing in this Policy shall be construed as prohibiting the Road Commission from a from entering into a voluntary agreement with a provider regarding right-of-way access that includes permits, terms, and conditions that are different than the requirements or limitations imposed by MCL 224.19b, including, but not limited to, the amount of permit fees, terms of insurance, the size or number of security bonds or right-of-way bonds, or other valuable consideration. If the Road Commission enters into a voluntary agreement to access the rights-of-way with 1 provider, it will also offer similar terms and conditions regarding access to the rights-of-way to other providers governed by the terms of this Policy.

Adopted: 7-23-19