

**MODEL
COMMUNICATIONS RIGHTS-OF-WAY
ORDINANCE**

**Florida League of Cities
Florida Association of Counties
Florida Telecommunications Industry Association**

**January
2001**

**Florida League of Cities
301 South Bronough Street
Post Office Box 1757
Tallahassee, Florida 32302-1757
Telephone: (850) 222-9684
Fax: (850) 222-3806**

**Florida Association of Counties
100 South Monroe Street
Post Office Box 549
Tallahassee, Florida 32302
Telephone: (850) 922-4300
Fax: (850) 488-7192**

**Florida Telecommunications Industry Association
1311-A Paul Russell Road, Suite 101
Post Office Box 1776
Tallahassee, Florida 32302-1776
Telephone: (850) 877-5141
Fax: (850) 878-3471**

INTRODUCTION

I. Participants, Purpose and General Description

This Model Communications Rights-of-Way Ordinance ("Model Ordinance") is a result of meetings and negotiations between representatives of the Florida League of Cities ("FLC"), Florida Association of Counties ("FAC") and Florida Telecommunications Industry Association ("FTIA") as well as other interested parties.

The purpose of the Model Ordinance is to assist local government officials in implementing select provisions of the Communications Services Tax Simplification Law, Chapter 2000-260, Laws of Florida. (Sections 50 and 51, Chapter 2000-260, Laws of Florida, are attached at the end of the Model Ordinance.) The Model Ordinance is not a one-size-fits-all ordinance and is designed to serve as a tool to assist local governments in recognizing the issues that should be considered in regulating their rights-of-way. The Model Ordinance is the product of a collaborative effort among the interested parties; however, the Model Ordinance should not be construed to represent an agreement among the interested parties, nor is it the only means for local governments to implement the provisions of the Communications Services Tax Simplification Law.

Effective January 1, 2001, Section 337.401, Florida Statutes, is amended to state that the Legislature intends for municipalities and counties to treat "telecommunications companies" in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of telecommunications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to telecommunications companies placing or maintaining telecommunications facilities in its roads or rights-of-way must be generally applicable to all telecommunications companies and may not require a telecommunications company to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining telecommunications facilities in its roads or rights-of-way. The law further states that a municipality or county may require a telecommunications company to register with the municipality or county. This statutory language is in Section 50, Chapter 2000-260, Laws of Florida.

Effective October 1, 2001, Section 337.401, Florida Statutes, is further amended to apply the language above to providers of "communications services" instead of "telecommunications companies." This statutory language is in Section 51, Chapter 2000-260, Laws of Florida. Providers of "communications services" is a broader category than "telecommunications companies," and is defined to include local telephone, cable, long distance, wireless, etc. The definition is in Section 2, Chapter 2000-260, Laws of Florida.

These provisions of the Communications Services Tax Simplification Law regarding management by local governments of public rights-of-way on a competitively neutral and

nondiscriminatory basis are consistent with Section 253 of the Federal Telecommunications Act of 1996 and Section 364.0361, Florida Statutes, enacted in 1996 and 1995, respectively.

The Model Ordinance is designed to impose rules to regulate the placement and maintenance of communications facilities in rights-of-way by providers of communications service. It includes, among other provisions, provisions providing for registration by communications services providers, provisions governing placement or maintenance of a communications facility in rights-of-way and insurance and indemnification requirements.

This Model Ordinance does not impose fees on communications services providers in connection with their placement or maintenance of facilities in rights-of-way. Effective October 1, 2001, the new tax structure under the Communications Services Tax Simplification Law takes effect, and the ability to impose franchise or other fees allowed under current law (for example, Section 337.401, Florida Statutes) is removed and replaced with the authority to charge the new tax. If you require further information regarding the new tax, please contact the persons referenced in Part VI below. The Florida League of Cities also has available for municipalities another model ordinance entitled "Model Fee Ordinance For Telecommunications Companies Occupying Municipal Rights-of-Way For Telecommunications Facilities". If you would like to review the Model Fee Ordinance, please contact the Florida League of Cities' contact person referenced in Part VI below.

II. Applicability to Providers of Communications Services, Except Cable Service Providers

Again, providers of "communications services" is a broader category than "telecommunications companies," and is defined to include local telephone, cable, long distance, wireless, etc. But, the law treats providers of cable service differently in some respects (namely, with reference to negotiating cable service franchise agreements). In light of this differing treatment, the Model Ordinance is drafted to apply to providers of communications services but specifically excludes regulating cable service providers, as more fully explained in Part III below.

Because an individual license, franchise or other agreement may not be required of telecommunications companies after January 1, 2001, and may not be required of communications services providers after October 1, 2001, municipalities and counties should consider adopting a general ordinance regulating the placement or maintenance of facilities by the broader providers of communications services, which includes telecommunications companies.

While nothing in the Communications Services Tax Simplification Law requires a municipality or county to adopt a general ordinance regulating the placement or maintenance of telecommunications or communications facilities in the public rights-of-way, you are encouraged to consider adopting such an ordinance because of the statutory restriction on requiring an individual license, franchise or other agreement as a condition of placing or maintaining facilities in rights-of-way. Your Municipal or County Code may already contain generally applicable provisions governing placement or maintenance of a communications facility or any utility facility in rights-of-way, which are unaffected by the new law. So, notwithstanding the new restriction on individual agreements, depending upon your existing circumstances, it may not be

necessary or desirable to adopt the Model Ordinance or certain parts of the Ordinance (for example, Section 6 entitled "Placement or Maintenance of a Communications Facility in Public Rights-of-Way").

III. Cable Service Providers

The regulation of cable service providers is not included in the Model Ordinance. While the definition of "communications services" in the Model Ordinance is broad enough to include cable service, the Model Ordinance specifically excludes "cable service" and notes that cable service providers may be subject to other ordinances of the municipality or county. Cable service providers are not regulated under the Model Ordinance in light of Section 337.401(3)(g) in Section 51, Chapter 2000-260, Laws of Florida. Subpart (3)(g) provides that: "Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law except those terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable services." Considering the continued franchise agreement activity with cable service providers and the issues mentioned in the next paragraph, representatives working on the Model Ordinance expressed a preference that providers of cable service not be included in the Ordinance.

As discussed in Part I above, Section 337.401(3)(a), Florida Statutes, is amended effective October 1, 2001, to state it is the legislative intent for municipalities and counties to treat providers of communications services, which includes cable service providers, in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way and that the rules or regulations must be generally applicable to all providers of communications services. Because cable service is included in the definition of "communications services" in Section 2, Chapter 2000-260, Laws of Florida, some have suggested that the law be changed during the 2001 session of the Florida Legislature to make abundantly clear, as was intended, that the law does not eliminate the authority to negotiate franchise agreements with cable service providers as allowed under federal and state law and to clarify how the requirement for generally applicable rules applies to cable service providers. Each municipality and county will be notified after the 2001 Legislative Session informing them on how cable service providers should be regulated, and proposed amendments to the Model Ordinance or a separate Model Ordinance for cable service providers may be included at that time.

IV. Additional Notice to the Secretary of State of Ordinance Consideration

If your municipality or county considers a telecommunications or communications rights-of-way ordinance, the Communications Services Tax Simplification Law provides for an additional notice of ordinance adoption. Effective January 1, 2001, Section 337.401, Florida Statutes, is amended to provide that in addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. As for counties, effective January 1,

2001, in addition to any other notice requirements, a county must provide to the Secretary of State, at least 15 days prior to consideration at a public hearing, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. (Note that effective October 1, 2001, Section 337.401, Florida Statutes, is further amended to state these additional notice requirements to the Secretary of State apply to proposed ordinances governing a provider of communications services placing or maintaining communications facilities in roads or rights-of-way.) It must be noted that the new law specifically states the failure of a municipality or a county to provide notice to the Secretary of State does not render any ordinance invalid.

You may contact the Secretary of State's Office by either going to their Internet website at <http://election.dos.state.fl.us> and clicking onto "Telecommunications Ordinances" and placing your notice there or by contacting Liz Cloud at the Secretary of State's office at 850-488-8427.

V. Existing Franchise Agreements

Nothing in the Communications Service Tax Simplification Law preempts, negates or specifically "grandfathers in" existing franchise agreements with telecommunications or other communications services providers. Section 18 of the Model Ordinance is a provision on the "Reservation of Rights and Remedies." This Section attempts to balance potential conflicts among the adoption of a generally applicable ordinance regulating the placement and maintenance of facilities in rights-of-way, existing franchise agreements which may not be consistent among each other or consistent with generally applicable ordinance provisions, and the statutory requirement to treat telecommunications or communications services providers in a nondiscriminatory and competitively neutral manner.

While the requirement to treat telecommunications or communications services providers in a nondiscriminatory and competitively neutral manner does not mean that all telecommunications or communications services providers must be treated the same, it does indicate that like telecommunications or communications services providers be treated consistently under like circumstances. Thus, there will be a period of transition where, potentially, various telecommunications or communications services providers operating under existing franchise agreements, or operating under the general ordinance provisions, will expect to be treated in a consistent manner by the municipality or county. (An example of this could be where a franchise agreement with a telecommunications company provides that the telecommunications company must meet certain insurance requirements but the general ordinance provisions provide for differing insurance requirements from a similar telecommunications company. These two telecommunications companies could claim that under the law they should be treated in a consistent manner.) While the number or frequency of these potentially conflicting scenarios that may occur is indeterminate, you should be aware the possibility exists.

Because the amendments to Section 337.401, Florida Statutes, require rules or regulations governing the placement or maintenance of telecommunications or communications facilities in public roads or rights-of-way be generally applicable to all providers of telecommunications or communications services, it is recommended that your municipal or county attorney review existing franchise agreements your municipality or county has with telecommunications

providers with the provisions within the Model Ordinance. This review should be performed in order to minimize conflicting provisions between the adoption of a general ordinance and existing franchise agreements. Any attempt on your part to treat telecommunications or communications services providers in a consistent manner should minimize perceived conflicts with the statutory requirements.

VI. Other

In certain places, the Model Ordinance contains notes in brackets. These notes provide additional information regarding the surrounding ordinance provisions. The notes may or may not include proposed ordinance language and each should be reviewed individually by the municipality or county when preparing the ordinance. The brackets and any note language not included in the body of the ordinance should be removed prior to final passage.

If you have any questions on the Model Ordinance, please have your municipal or county attorney contact:

For Municipalities: Kraig Conn, Deputy General Counsel, Florida League of Cities, 850-222-9684

For Counties: Lee Killinger, General Counsel, Florida Association of Counties, 850-922-4300

The Model Ordinance is available in an electronic format and may be obtained by going to the Florida League of Cities' Internet website at www.flcities.com and click on Legislative Services and the drop down box entitled Communications Tax. You may also contact Susan Harris at the Florida League of Cities at sharris@flcities.com and request that it be e-mailed to you. The Model Ordinance is also available on the Florida Association of Counties' Internet website at www.fl-counties.com.

MODEL COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE OF THE (MUNICIPALITY/COUNTY), FLORIDA, RELATING TO COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR TITLE; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR NOTICE OF TRANSFER, SALE OR ASSIGNMENT OF ASSETS IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR APPEALS; PROVIDING FOR INVOLUNTARY TERMINATION OF REGISTRATION; PROVIDING FOR EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR SECURITY FUND; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, effective January 1, 2001, Section 337.401, Florida Statutes (2000), is amended to state that because federal and state law require the nondiscriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of telecommunications services, it is the intent of the Legislature that municipalities and counties treat telecommunications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of telecommunications facilities in the public roads or rights-of-way. Rules or

regulations imposed by a municipality or county relating to telecommunications companies placing or maintaining telecommunications facilities in its roads or rights-of-way must be generally applicable to all telecommunications companies and, notwithstanding any other law, may not require a telecommunications company to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining telecommunications facilities in its roads or rights-of-way; and

WHEREAS, effective October 1, 2001, Section 337.401, Florida Statutes (2000), is further amended to state that because of the unique circumstances applicable to providers of communications services and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services, except as otherwise provided for providers of cable service, to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way; and

WHEREAS, it is the intent of the (Municipality/County) to exercise the (Municipality's/County's) authority over communications services providers' placement and maintenance of facilities in the public rights-of-way; and

WHEREAS, it is the (Municipality's/County's) intent to treat each communications services provider in a nondiscriminatory and competitively neutral manner in exercising such authority; and

WHEREAS, the public rights-of-way subject to the jurisdiction and control of the (Municipality/County): (1) are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; (2) are a unique and physically limited resource and proper management by the (Municipality/County) is necessary to maximize efficiency, minimize the costs to the taxpayers of the foregoing uses, and to minimize the inconvenience to and negative effects upon the public from such facilities' placement and maintenance in the public rights-of-way; and (3) are intended for public uses and must be managed and controlled consistently with that intent; and

WHEREAS, it is the intent of the (Municipality/County) to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, it is the intent of the (Municipality/County) that this Ordinance shall not apply to cable service providers.

NOW, THEREFORE, BE IT ORDAINED BY _____
(MUNICIPALITY/COUNTY)_____, FLORIDA AS FOLLOWS:

Section 1 - Title

This Ordinance shall be known and may be cited as the (Municipality/County) Communications Rights-of-Way Ordinance.

Section 2 – Intent and Purpose

It is the intent of the (Municipality/County) to promote the public health, safety and general welfare by: providing for the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the (Municipality/County); adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, including Section 337.401, Florida Statutes (2000), as it may be amended, the (Municipality's/County's) home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other Federal and State law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers; and minimizing disruption to the Public Rights-of-Way. In regulating its Public Rights-of-Way, the (Municipality/County) shall be governed by and shall comply with all applicable Federal and State laws.

Section 3 – Definitions

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

1. "Abandonment" shall mean the permanent cessation of all uses of a Communications Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of

example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in Public Rights-of-Way.

2. "(Municipality/County)" shall mean _____, Florida.

3. "Communications Services" shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this Ordinance "cable service", as defined in Section 202.11(2), Florida Statutes (2000), as it may be amended, is not included in the definition of "Communications Services," and cable service providers may be subject to other ordinances of the (Municipality/County).

4. "Communications Services Provider" shall mean any Person including a municipality or county providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-Way. ["Communications Services Provider" shall also include any Person including a municipality or county that places or maintains a Communications Facility in Public Rights-of-Way but does not provide Communications Services.] [Note: A Municipality or County may include the above bracketed sentence so that it may regulate, and require registration under this Ordinance, of companies that place Communications Facilities in Public Rights-of-Way but do not provide Communications Services. An example is a company that places "dark fiber" in Public Rights-of-Way and leases or otherwise provides those facilities to a company that provides Communications Services using the facilities.]

5. "Communications Facility" or "Facility" or "System" shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the Public Rights-of-Way of the (Municipality/County) and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communications Services.

6. "FCC" shall mean the Federal Communications Commission.

7. "In Public Rights-of-Way" or "in the Public Rights-of-Way" shall mean in, on, over, under or across the Public Rights-of-Way.

8. "Ordinance" shall mean this Ordinance.

9. "Person" shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the (Municipality/County) to the extent the (Municipality/County) acts as a Communications Services Provider.

10. "Place or maintain" or "placement or maintenance" or "placing or maintaining" shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A Communications Services Provider that owns or exercises physical control over Communications Facilities in Public Rights-of-Way, such as the physical control to maintain and repair, is "placing or maintaining" the Facilities. A Person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the Communications Facilities through which such service is provided. The

transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way does not constitute "placing or maintaining" Facilities in the Public Rights-of-Way.

11. "Public Rights-of-Way" shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the (Municipality/County) is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public Rights-of-Way" shall not include private property. "Public Rights-of-Way" shall not include any real or personal (Municipality/County) property except as described above and shall not include (Municipality/County) buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

12. "Registrant" shall mean a Communications Services Provider that has Registered with the (Municipality/County) in accordance with the provisions of this Ordinance.

13. "Registration" or "Register" shall mean the process described in this Ordinance whereby a Communications Services Provider provides certain information to the (Municipality/County).

Section 4 - Registration for Placing or Maintaining Communications Facilities in Public Rights-of-Way

1. A Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the (Municipality/County) shall first Register with the (Municipality/County) in accordance with this Ordinance. Subject to the terms and conditions prescribed in this Ordinance, a Registrant may place or maintain a Communications Facility in Public Rights-of-Way.

2. A Registration shall not convey any title, equitable or legal, to the Registrant in the Public Rights-of-Way. Registration under this Ordinance governs only the placement or maintenance of Communications Facilities in Public Rights-of-Way. Other ordinances, codes or regulations may apply to the placement or maintenance in the Public Rights-of-Way of facilities that are not Communications Facilities. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on the (Municipality's/County's) or another Person's facilities. Registration does not excuse a Communications Services Provider from complying with all applicable (Municipality/County) ordinances, codes or regulations, including this Ordinance.

3. Each Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the (Municipality/County) shall file a single Registration with the (Municipality or County) which shall include the following information:

- (a) name of the applicant;
- (b) name, address and telephone number of the applicant's primary contact person in connection with the Registration, and the person to contact in case of an emergency;
- (c) for Registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;
- (d) evidence of the insurance coverage required under this Ordinance and acknowledgment that Registrant has received and reviewed a copy of this Ordinance, which acknowledgment shall not be deemed an agreement; and
- (e) the number of the applicant's certificate of authorization or license to provide Communications Services issued by the Florida Public Service Commission, the Federal Communications Commission, or other Federal or State authority, if any.

[Note: The Municipality or County may want to consider the following as an additional element for a registration: (f) for an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, such as the number of the certificate from or filing with the Florida Department of State.]

4. Registration Application Fees. [Note: A Municipality or County may, at its option, require a registration application fee through October 1, 2001. If the municipality or county decides to charge such fee, note that some telecommunications services providers may offset this registration application fee against fees payable to a municipality under Section 337.401(3), Florida Statutes (2000), so the municipality may choose not to require a separate registration application fee from such providers. Under the provisions of Sections 16 and 51, Chapter 2000-260, Laws of Florida, effective October 1, 2001, registration application fees do not appear to be permitted.]

(a) Each applicant for a Registration ("shall" or "may be required to") submit a registration application fee with the application, which shall not be refunded if the application is withdrawn; provided that the Registrant may credit the registration application fee as provided in Section 337.401(3), Florida Statutes (2000). Fee amounts shall be established by Resolution (of the Municipal or County Commission) and shall be in an amount not to exceed the (Municipality's/County's) costs and expenses incurred in connection with reviewing and approving the Registration. If the registration application fee is insufficient to cover all costs or expenses incurred by the (Municipality/County) in connection with review and approval of the Registration, the applicant shall reimburse the (Municipality/County) for any such costs and expenses in excess of the registration application fee following receipt of written notice, which shall explain any additional costs or expenses. This subsection 4 (a) shall be repealed and shall have no force or effect on or after October 1, 2001.

(b) No registration application fees shall be imposed on or after October 1, 2001.

5. The (Municipality/County) shall review the information submitted by the applicant. Such review shall be by the (Designated Municipal/County Official) or his or her designee. If the applicant submits information in accordance with subsection 3. above, the Registration shall be effective and the (Municipality/County) shall notify the applicant of the effectiveness of Registration in writing. If the (Municipality/County) determines that the information has not been submitted in accordance with subsection 3. above, the (Municipality/County) shall notify the applicant of the non-effectiveness of Registration, and reasons for the non-effectiveness, in writing. The (Municipality/County) shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Non-effectiveness of Registration shall not preclude an applicant from filing subsequent applications for Registration under the provisions of this Section. [Note: Optional language for consideration if an appeal process is included in this Ordinance: An applicant has thirty (30) days after receipt of a notice of non-effectiveness of Registration to appeal the decision as provided in Section 8.] [Note: Section 8 contains proposed appeals language to consider if the existing Municipal or County Code does not already contain an appeals process that will apply to this Ordinance. An appeals process, whether included in Section 8 or covered by existing Code provisions, should apply to this Ordinance.]

6. A Registrant may cancel a Registration upon written notice to the (Municipality/County) stating that it will no longer place or maintain any Communications Facilities in Public Rights-of-Way within the (Municipality/County) and will no longer need to obtain permits to perform work in Public Rights-of-Way. A Registrant cannot cancel a Registration if the Registrant continues to place or maintain any Communications Facilities in Public Rights-of-Way.

7. Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a Communications Facility in Public Rights-of-Way within the (Municipality/County) but shall establish for the Registrant a right to apply for a

permit, if permitting is required by the (Municipality/County). Registrations are expressly subject to any future amendment to or replacement of this Ordinance and further subject to any additional (Municipal/County) ordinances, as well as any State or Federal laws that may be enacted.

8. A Registrant shall renew its Registration with the (Municipality/County) by April 1 of even numbered years in accordance with the Registration requirements in this Ordinance, except that a Registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection 3, except, as of October 1, 2001, subsection 3(c), a Registrant shall provide updated information to the (Municipality/County). If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the (Municipality/County) restricting the issuance of additional permits until the Communications Services Provider has complied with the Registration requirements of this Ordinance.

9. In accordance with applicable (Municipality/County) ordinances, codes or regulations, a permit may be required of a Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way. An effective Registration shall be a condition of obtaining a permit. Notwithstanding an effective Registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a Registrant having an effective Registration if all permitting requirements are met.

Section 5 - Notice of Transfer, Sale or Assignment of Assets in Public Rights-of-Way

If a Registrant transfers, sells or assigns its assets located in Public Rights-of-Way incident to a transfer, sale or assignment of the Registrant's assets, the transferee, buyer or

assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided by such Registrant to the (Municipality/County) within twenty (20) days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current Registrant, then the transferee, buyer or assignee is not required to re-Register. If the transferee, buyer or assignee is not a current Registrant, then the transferee, buyer or assignee shall Register as provided in Section 4 within sixty (60) days of the transfer, sale or assignment.

[Note: Optional language for consideration: If permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify (the Public Works Department or other appropriate office) that the transferee, buyer or assignee is the new applicant].

Section 6 – Placement or Maintenance of a Communications Facility in Public Rights –of- Way

[Note: The provisions of this Section may be covered under existing Municipal or County permitting or other ordinance provisions in the Municipal or County Code. Where this is the case, a cross reference in this Ordinance to the applicability of those Code provisions may be appropriate instead of including all of the provisions in this Section.]

1. A Registrant shall at all times comply with and abide by all applicable provisions of the State and Federal law and (Municipal/County) ordinances, codes and regulations in placing or maintaining a Communications Facility in Public Rights-of-Way.

2. A Registrant shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits, if any, have been issued by the (Municipality/County) or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare,

which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the (Municipality/County) of the placement or maintenance of a Communications Facility in Public Rights-of-Way in the event of an emergency. [Note: Optional language to consider adding to this sentence: and (shall or may be required to) obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in Public Rights-of-Way in connection with the emergency.] Registrant acknowledges that as a condition of granting such permits, the (Municipality/County) may impose reasonable rules or regulations governing the placement or maintenance of a Communications Facility in Public Rights-of-Way. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the permit. [Note: A Municipality or County may consider including the following, as a local government may decide that blanket permits are beneficial to both the local government and Registrants: The (Municipality/County) may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits.]

3. As part of any permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way, the Registrant shall provide the following:

(a) The location of the proposed Facilities, including a description of the Facilities to be installed, where the Facilities are to be located, and the approximate size of Facilities that will be located in Public Rights-of-Way;

(b) A description of the manner in which the Facility will be installed (i.e. anticipated construction methods or techniques);

(c) A maintenance of traffic plan for any disruption of the Public Rights-of-Way;

(d) Information on the ability of the Public Rights-of-Way to accommodate the proposed Facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons);

(e) If appropriate given the Facility proposed, an estimate of the cost of restoration to the Public Rights-of-Way;

(f) The timetable for construction of the project or each phase thereof, and the areas of the (Municipality/County) which will be affected; and

(g) Such additional information as the (Municipality/County) finds reasonably necessary with respect to the placement or maintenance of the Communications Facility that is the subject of the permit application to review such permit application.

4. To the extent not otherwise prohibited by State or Federal law, the (Municipality/County) shall have the power to prohibit or limit the placement of new or additional Communications Facilities within a particular area of Public Rights-of Way.

5. All Communications Facilities shall be placed or maintained so as not to unreasonably interfere with the use of the Public Rights-of-Way by the public and with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way. The use of trenchless technology (i.e., directional bore method) for the installation of Facilities in the Public Rights-of-Way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. The (Appropriate Municipal/County Official) may promulgate reasonable rules and regulations concerning the placement or maintenance of a Communications Facility in Public Rights-of-Way consistent with this Ordinance and other applicable law.

6. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Communications Facilities.

7. After the completion of any placement or maintenance of a Communications Facility in Public Rights-of-Way or each phase thereof, a Registrant shall, at its own expense, restore the Public Rights-of-Way to its original condition before such work. If the Registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the (Municipality/County) may perform restoration and charge the costs of the restoration against the Registrant in accordance with Section 337.402, Florida Statutes (2000), as it may be amended. For twelve (12) months following the original completion of the work, the Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Ordinance at its own expense.

8. Removal or relocation at the direction of the (Municipality/County) of a Registrant's Communications Facility in Public Rights-of-Way shall be governed by the provisions of Sections 337.403 and 337.404, Florida Statutes (2000), as they may be amended.

9. A permit from the (Municipality/County) constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way.

10. A Registrant shall maintain its Communications Facility in Public Rights-of-Way in a manner consistent with accepted industry practice and applicable law.

11. In connection with excavation in the Public Rights-of-Way, a Registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes (2000), as it may be amended.

12. Registrant shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

13. Upon request of the (Municipality/County), and as notified by the (Municipality/County) of the other work, construction, installation or repairs referenced below, a Registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights-of-Way, and Registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the Public Rights-of-Way.

14. A Registrant shall not place or maintain its Communications Facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the (Municipality/County) or any other Person's facilities lawfully occupying the Public Rights-of-Way of the (Municipality/County).

15. (Municipality/County) makes no warranties or representations regarding the fitness, suitability, or availability of (Municipality's/County's) Public Rights-of-Way for the Registrant's Communications Facilities and any performance of work, costs incurred or services provided by Registrant shall be at Registrant's sole risk. Nothing in this Ordinance shall affect the (Municipality's/County's) authority to add, vacate or abandon Public Rights-of-Way, and (Municipality/County) makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-Way for Communications Facilities. [Note: Your Municipality or County should consider adding a cross reference in this subsection to an existing land development regulation or other ordinance regulating the vacation or abandonment of rights-of-way. If your Municipality or County does not have an existing ordinance on this subject, you should consider adopting an ordinance which, among other things, protects the interests of persons with facilities in the subject rights-of-way.]

16. The (Municipality/County) shall have the right to make such inspections of Communications Facilities placed or maintained in Public Rights-of-Way as it finds necessary to ensure compliance with this Ordinance.

17. A permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way shall include plans showing the location of the proposed installation of Facilities in the Public Rights-of-Way. If the plans so provided require revision based upon actual installation, the Registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the (Municipality/County), provided such electronic format is maintained by the Registrant. Such plans in a format maintained by the Registrant shall be provided at no cost to the (Municipality/County). [Note: For your information: Section 202.195, Florida Statutes (2000), provides that specified proprietary confidential business information obtained from a telecommunications company or franchised cable company by a local governmental entity is exempt from the Florida public records law.]

18. The (Municipality/County) reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the (Municipality/County) in Public Rights-of-Way occupied by the Registrant. The (Municipality/County) further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the Public Rights-of-Way within the limits of the (Municipality/County) and within said limits as same may from time to time be altered.

19. A Registrant shall, on the request of any Person holding a permit issued by the (Municipality/County), temporarily raise or lower its Communications Facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Registrant shall have the authority to

require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.

[Note: Your Municipality or County should consider including a subsection within the Ordinance establishing design criteria for wireless facilities that may be placed on structures within the Public Rights-of-Way. The purpose of design criteria for wireless facilities is to establish a coordinated approach to the introduction of wireless facilities in the Public Rights-of-Way. Traditionally, the Public Rights-of-Way have not served as a means of siting wireless facilities. The Florida Telecommunications Industry Association has proposed the following language on design criteria for wireless facilities:

A wireless facility that is a portion of a Communication Facility, such as an antenna (“Wireless Facility(ies)”), which is attached to a legally maintained vertical structure in the Public Rights-of-Way, such as a light pole or utility pole (“Vertical Structure(s)”), shall be subject to the following criteria:

(a) such Wireless Facilities may not extend more than 20 feet above the highest point of the Vertical Structure;

(b) such Wireless Facilities that are attached to a Vertical Structure located in Public Rights-of-Way that is fifteen feet or less in width and is located adjacent to real property used as a single family residence shall be flush mounted to the Vertical Structure;

(c) such Wireless Facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;

(d) such Wireless Facilities shall comply with any applicable Federal Communications Commission Emissions Standards;

(e) the design, construction, and installation of such Wireless Facilities shall comply with any applicable local building codes;

(f) no commercial advertising shall be allowed on such Wireless Facilities; and

(g) any accessory equipment and related housing in the Public Rights-of-Way that are used in conjunction with such a Wireless Facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment.

Vertical structures, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the Public Rights-of-Way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such Public Rights-of-Way are located or to which they are adjacent.]

Section 7 - Suspension of Permits [Note: The provisions of this Section may be covered under a separate Municipal or County permitting or other ordinance. These provisions may not be necessary depending on local conditions.]

The (Municipality/County) may suspend a permit for work in the Public Rights-of-Way for one or more of the following reasons: [Note: If your Municipality/County includes an appeal process in this Ordinance, the following language should be considered for inclusion in the above sentence: ", subject to Section 8 of this Ordinance" or if an appeal process is in existing County or Municipal Code provisions, this language should refer to those provisions instead of Section 8.]

1. violation of permit conditions, including conditions set forth in the permit, this Ordinance or other applicable (Municipal/County) ordinances, codes or regulations governing placement or maintenance of Communications Facilities in Public Rights-of-Way;

2. misrepresentation or fraud by Registrant in a Registration or permit application to the (Municipality/County); or

3. failure to properly renew or ineffectiveness of Registration.

[Note: A Municipality or County may consider adding this provision as an additional reason for suspending a permit: 4. failure to relocate or remove Facilities as may be lawfully required by the (Municipality/County).]

The (Appropriate Municipal/County Official) shall provide notice and an opportunity to cure any violation of 1. through 3. above, each of which shall be reasonable under the circumstances.

Section 8 – Appeals [Note: The provisions of this Section may be covered under a separate Municipal or County appeals or other ordinance. These provisions may not be necessary depending on local conditions.]

Final, written decisions of the (Designated Municipal/County Official) or his or her designee suspending or denying a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. [Note: The standards for an appeal process may need to be determined at the local level. The following appeal process is provided only as a suggested format: An appeal must be filed with the (Designated Municipal/County Official) within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The (Municipality/County) shall (hear or appoint a hearing officer to consider) the appeal as set forth in (the designated Municipal/County ordinances). The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the Registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.]

Section 9 – Involuntary Termination of Registration

1. The (Municipality/County) may terminate a Registration if:
 - (a) a Federal or State authority suspends, denies, or revokes a Registrant's certification or license to provide Communications Services;
 - (b) the Registrant's placement or maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public Rights-of-Way and the Registrant fails to remedy the danger promptly after receipt of written notice; or
 - (c) the Registrant ceases to use all of its Communications Facilities in Public Rights-of-Way and has not complied with Section 16 of this Ordinance.

2. Prior to termination, the Registrant shall be notified by the (Appropriate Municipal/County Official) with a written notice setting forth all matters pertinent to the proposed termination action, including which of (a) through (c) above is applicable as the reason therefore, and describing the proposed action of the (Municipality/County) with respect thereto. The Registrant shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the (Appropriate Municipal/County Official), to accomplish the same. If the plan is rejected, the (Appropriate Municipal/County Official) shall provide written notice of such rejection to the Registrant and shall make a recommendation to the (Municipal/County Commission/Council) regarding a decision as to termination of Registration. A decision by a (Municipality/County) to terminate a Registration may only be accomplished by an action of the (Municipal/County Commission/Council). A Registrant shall be notified by written notice of any decision by the

(Municipal/County Commission/Council) to terminate its Registration. Such written notice shall be sent within seven (7) days after the decision.

3. In the event of termination, the former Registrant shall: (a) notify the (Municipality/County) of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in Public Rights-of-Way; or (b) provide the (Municipality/County) with an acceptable plan for disposition of its Communications Facilities in Public Rights-of-Way. If a Registrant fails to comply with this subsection 3., which determination of non-compliance is subject to appeal as provided in Section 8 [Note: This cross-reference to the particular Code provisions that govern the appeal process may vary depending upon local conditions], the (Municipality/County) may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the Facilities where another Person has not assumed the ownership or physical control of the Facilities or requiring the Registrant within 90 days of the termination, or such longer period as may be agreed to by the Registrant, to remove some or all of the Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its original condition before the removal.

4. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way of the (Municipality/County).

5. In the event of termination of a Registration, this Section does not authorize the (Municipality/County) to cause the removal of Communications Facilities used to provide another service for which the Registrant or another Person who owns or exercises physical control over the Facilities holds a valid certification or license with the governing Federal or

State agency, if required for provision of such service, and is Registered with the (Municipality/County), if required.

Section 10 – Existing Communications Facilities in Public Rights-of-Way

A Communications Services Provider with an existing Communications Facility in the Public Rights-of-Way of the (Municipality/County) has sixty (60) days from the Effective Date of this Ordinance to comply with the terms of this Ordinance, including, but not limited to, Registration, or be in violation thereof.

Section 11 – Insurance

1. A Registrant shall provide, pay for and maintain satisfactory to the (Municipality/County) the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the (Municipality/County). All liability policies shall provide that the (Municipality/County) is an additional insured as to the activities under this Ordinance. The required coverages must be evidenced by properly executed Certificates of Insurance forms. The Certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the (Municipality/County) annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the (Municipality/County) must be given to the (Municipality/County) of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the (Municipality/County).

2. [Note: A Municipality or County should include coverage limits appropriate for the particular Municipality or County.]

The limits of coverage of insurance required shall be not less than the following:

- (a) Worker's Compensation and Employer's Liability Insurance
Worker's Compensation-Florida Statutory Requirements

Employer's Liability - \$ _____ limit each accident
\$ _____ limit per accident
\$ _____ limit per each employee

- (b) Comprehensive General Liability
Bodily injury and property damage-
\$ _____ combined single limit each occurrence
- (c) Automobile Liability
Bodily injury and property damage-
\$ _____ combined single limit each accident

Section 12 – Indemnification

1. A Registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the (Municipality/County), its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the (Municipality/County) arising out of the placement or maintenance of its Communications System or Facilities in Public Rights-of-Way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided, however, that a Registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the (Municipality/County). This provision includes, but is not limited to, the (Municipality's/County's) reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. (Municipality/County) agrees to notify the Registrant, in writing, within a reasonable time of (Municipality/County) receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the (Municipality/County) from participating in the defense of any litigation by its own counsel and at its own cost if in the (Municipality's/County's) reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted:

- (a) as denying to either party any remedy or defense available to such party under the laws of

the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes (2000), as it may be amended.

2. The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

Section 13 – Construction Bond

1. Prior to issuing a permit where the work under the permit will require restoration of Public Rights-of-Way, a (Municipality/County) may require a construction bond to secure the restoration of the Public Rights-of-Way. Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the Security Fund as provided in Section 14. [Note: A Municipality or County may want to provide more specific requirements for a construction bond in the Ordinance. Examples of additional provisions include: 1. Twelve (12) months after the completion of the restoration in Public Rights-of-Way in accordance with the bond, the Registrant may eliminate the bond. However, the (Municipality/County) may subsequently require a new bond for any subsequent work in the Public Rights-of-Way. 2. The construction bond shall be issued by a surety having a rating reasonably acceptable to the (Municipality/County); shall be subject to the approval of the (Appropriate Municipal/County Official); and shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the (Municipality/County), by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."]

2. The rights reserved by the (Municipality/County) with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the (Municipality/County) may have under this Ordinance, or at law or equity.

3. The rights reserved to the (Municipality/County) under this Section are in addition to all other rights of the (Municipality/County), whether reserved in this Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the (Municipality/County) may have.

Section 14 – Security Fund

[Note: This Section 14 is optional and may be included where a Municipality or County wishes to require additional security from Registrants. The amount of the Security Fund may vary depending upon the particular Municipality or County.]

At or prior to the time a Registrant receives its first permit to place or maintain a Communications Facility in Public Rights-of-Way after the effective date of this Ordinance, the Registrant may be required to file with the (Municipality/County), for (Municipality/County) approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of (\$25,000 or other appropriate amount) having as a surety a company qualified to do business in the State of Florida, and acceptable to the (Appropriate Municipal/County Official), which shall be referred to as the "Security Fund." The Security Fund shall be maintained from such time through the earlier of: 1. transfer, sale, assignment or removal of all Communications Facilities in Public Rights-of-Way; or 2. twelve (12) months after the termination or cancellation of any Registration. The Security Fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon Registrant by the provisions of this Ordinance. The Security Fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this Ordinance, subject to Section 15 of this Ordinance, there shall be recoverable, jointly and severally from the principal and surety of the Security Fund, any damages or loss suffered by the (Municipality/County) as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any

Facilities of the Registrant in Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund. Notwithstanding the foregoing, the (Municipality/County) may in its discretion not require a Security Fund or may accept a corporate guarantee of the Registrant or its parent company.

Section 15 – Enforcement Remedies

1. A Registrant's failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Registrant to the code enforcement provisions and procedures as provided in (refer to the applicable Municipal/County Code provision on code enforcement). [Note: Chapter 162, Florida Statutes (2000), for municipalities and counties; Section 125.69, Florida Statutes (2000), for counties; or Section 166.0415, Florida Statutes (2000), for municipalities; whichever might have been selected by the Municipality or County]. In addition, violation of this Ordinance may be punishable as provided in (Section 125.69, Florida Statutes, as it may be amended, for counties) (Section 162.22, Florida Statutes, as it may be amended, for municipalities). [Note: If your Municipality or County does not have an existing code enforcement process, you may consider adopting a process for this Ordinance. Additional provisions could be: 1. Before imposing a fine pursuant to this Section, the (Appropriate Municipal/County Official) shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the Registrant shall have thirty (30) days to either: (a) cure the violation to the (Municipality's/County's) satisfaction and the (Municipality/County) shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the (Municipality/County) to contest the alleged violation. Section 8 shall govern such appeal. [Note: This cross-reference to the particular Code provisions that govern the appeal

process may vary depending upon local conditions.] If no appeal is filed and if the violation is not cured within the thirty (30) day period, the (Municipality/County) may collect all fines owed, beginning with the first day of the violation, through any means allowed by law. 2. In determining which remedy is appropriate, the (Municipality/County) shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the (Municipality/County) determines are appropriate to the public interest. 3. In any proceeding before the (Municipality/County) where there exists an issue with respect to a Registrant's performance of its obligations pursuant to this Ordinance, the Registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The (Municipality/County) may find a Registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply (a remedy as authorized by this Ordinance.) 4. The (Appropriate Municipal/County Official) or a designee shall be responsible for administration and enforcement of this Ordinance, and is authorized to give any notice required by law.]

2. Failure of the (Municipality/County) to enforce any requirements of this Ordinance shall not constitute a waiver of the (Municipality's/County's) right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Section 16 – Abandonment of a Communications Facility

1. Upon Abandonment of a Communications Facility owned by a Registrant in Public Rights-of-Way, the Registrant shall notify the (Municipality/County) within ninety (90) days.

2. The (Municipality/County) may direct the Registrant by written notice to remove all or any portion of such Abandoned Facility at the Registrant's sole expense if the (Municipality/County) determines that the Abandoned Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Facility: (a) compromises safety at any time for any Public Rights-of-Way user or during construction or maintenance in Public Rights-of-Way; (b) prevents another Person from locating facilities in the area of Public Rights-of-Way where the Abandoned Facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the Public Rights-of-Way's use. In the event of (b), the (Municipality/County) may require the third Person to coordinate with the Registrant that owns the existing Facility for joint removal and placement, where agreed to by the Registrant.

3. In the event that the (Municipality/County) does not direct the removal of the Abandoned Facility, the Registrant, by its notice of Abandonment to the (Municipality/County), shall be deemed to consent to the alteration or removal of all or any portion of the Facility by the (Municipality/County) or another Person at such third party's cost.

4. If the Registrant fails to remove all or any portion of an Abandoned Facility as directed by the (Municipality/County) within a reasonable time period as may be required by the (Municipality/County) under the circumstances, the (Municipality/County) may perform such removal and charge the cost of the removal against the Registrant.

Section 17 – Force Majeure

In the event a Registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as

a result, provided, however, that such Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Registrant's control, and thus not falling within this Section, shall include, without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

Section 18 – Reservation of Rights and Remedies

1. The (Municipality/County) reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

2. This Ordinance shall be applicable to all Communications Facilities placed in the Public Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities in the Public Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by State and Federal law.

3. The adoption of this Ordinance is not intended to affect any rights or defenses of the (Municipality/County) or a Communications Service Provider under any existing franchise, license or other agreements with a Communications Services Provider.

4. Nothing in this Ordinance shall affect the remedies the (Municipality/County) or the Registrant has available under applicable law.

5. Any Person who uses the Communications Facilities of a Registrant, other than the Registrant that owns the Facilities, shall not be entitled to any rights to place or maintain such Facilities in excess of the rights of the Registrant that places or maintains the Facilities.

Section 19 – Severability

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 20 – Effective Date

This Ordinance shall be effective immediately upon passage. (Municipalities)

This Ordinance shall be effective immediately upon filing with the Department of State.

(Counties)

PASSED AND ADOPTED by a _____ vote of the (Municipality) on first reading on the _____ day of _____, 2001.

PASSED AND ADOPTED by a _____ vote of the (Municipality) on second reading on the _____ day of _____, 2001.

or

PASSED AND ADOPTED by the governing body of the (County) on the _____ day of _____, 2001.

ATTEST:

CLERK

APPROVED AS TO FORM:

ATTORNEY