

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6676

Chapter 83, Laws of 2000

56th Legislature
2000 Regular Session

RIGHTS OF WAY--USE BY TELECOMMUNICATIONS SERVICES

EFFECTIVE DATE: 6/8/00

Passed by the Senate March 7, 2000
YEAS 41 NAYS 4

BRAD OWEN
President of the Senate

Passed by the House March 1, 2000
YEAS 95 NAYS 3

CLYDE BALLARD
Speaker of the
House of Representatives

FRANK CHOPP
Speaker of the
House of Representatives

Approved March 24, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6676** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

March 24, 2000 - 12:50 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6676

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Energy, Technology & Telecommunications
(originally sponsored by Senators Finkbeiner and Brown; by request of
Governor Locke)

Read first time 02/04/2000.

1 AN ACT Relating to the use of city or town rights of way by
2 telecommunications and cable television providers; amending RCW
3 35.21.860; adding a new section to chapter 35A.21 RCW; and adding a new
4 chapter to Title 35 RCW.

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

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

8 (1) "Cable television service" means the one-way transmission to
9 subscribers of video programming and other programming service and
10 subscriber interaction, if any, that is required for the selection or
11 use of the video programming or other programming service.

12 (2) "Facilities" means all of the plant, equipment, fixtures,
13 appurtenances, antennas, and other facilities necessary to furnish and
14 deliver telecommunications services and cable television services,
15 including but not limited to poles with crossarms, poles without
16 crossarms, wires, lines, conduits, cables, communication and signal
17 lines and equipment, braces, guys, anchors, vaults, and all
18 attachments, appurtenances, and appliances necessary or incidental to

1 the distribution and use of telecommunications services and cable
2 television services.

3 (3) "Master permit" means the agreement in whatever form whereby a
4 city or town may grant general permission to a service provider to
5 enter, use, and occupy the right of way for the purpose of locating
6 facilities. This definition is not intended to limit, alter, or change
7 the extent of the existing authority of a city or town to require a
8 franchise nor does it change the status of a service provider asserting
9 an existing state-wide grant based on a predecessor telephone or
10 telegraph company's existence at the time of the adoption of the
11 Washington state Constitution to occupy the right of way. For the
12 purposes of this subsection, a franchise, except for a cable television
13 franchise, is a master permit. A master permit does not include cable
14 television franchises.

15 (4) "Personal wireless services" means commercial mobile services,
16 unlicensed wireless services, and common carrier wireless exchange
17 access services, as defined by federal laws and regulations.

18 (5) "Right of way" means land acquired or dedicated for public
19 roads and streets, but does not include:

20 (a) State highways;

21 (b) Land dedicated for roads, streets, and highways not opened and
22 not improved for motor vehicle use by the public;

23 (c) Structures, including poles and conduits, located within the
24 right of way;

25 (d) Federally granted trust lands or forest board trust lands;

26 (e) Lands owned or managed by the state parks and recreation
27 commission; or

28 (f) Federally granted railroad rights of way acquired under 43
29 U.S.C. Sec. 912 and related provisions of federal law that are not open
30 for motor vehicle use.

31 (6) "Service provider" means every corporation, company,
32 association, joint stock association, firm, partnership, person, city,
33 or town owning, operating, or managing any facilities used to provide
34 and providing telecommunications or cable television service for hire,
35 sale, or resale to the general public. Service provider includes the
36 legal successor to any such corporation, company, association, joint
37 stock association, firm, partnership, person, city, or town.

38 (7) "Telecommunications service" means the transmission of
39 information by wire, radio, optical cable, electromagnetic, or other

1 similar means for hire, sale, or resale to the general public. For the
2 purpose of this subsection, "information" means knowledge or
3 intelligence represented by any form of writing, signs, signals,
4 pictures, sounds, or any other symbols. For the purpose of this
5 chapter, telecommunications service excludes the over-the-air
6 transmission of broadcast television or broadcast radio signals.

7 (8) "Use permit" means the authorization in whatever form whereby
8 a city or town may grant permission to a service provider to enter and
9 use the specified right of way for the purpose of installing,
10 maintaining, repairing, or removing identified facilities.

11 NEW SECTION. **Sec. 2.** A city or town may grant, issue, or deny
12 permits for the use of the right of way by a service provider for
13 installing, maintaining, repairing, or removing facilities for
14 telecommunications services or cable television services pursuant to
15 ordinances, consistent with this act.

16 NEW SECTION. **Sec. 3.** (1) Cities and towns may require a service
17 provider to obtain a master permit. A city or town may request, but
18 not require, that a service provider with an existing state-wide grant
19 to occupy the right of way obtain a master permit for wireline
20 facilities.

21 (a) The procedures for the approval of a master permit and the
22 requirements for a complete application for a master permit shall be
23 available in written form.

24 (b) Where a city or town requires a master permit, the city or
25 town shall act upon a complete application within one hundred twenty
26 days from the date a service provider files the complete application
27 for the master permit to use the right of way, except:

28 (i) With the agreement of the applicant; or

29 (ii) Where the master permit requires action of the legislative
30 body of the city or town and such action cannot reasonably be obtained
31 within the one hundred twenty day period.

32 (2) A city or town may require that a service provider obtain a use
33 permit. A city or town must act on a request for a use permit by a
34 service provider within thirty days of receipt of a completed
35 application, unless a service provider consents to a different time
36 period or the service provider has not obtained a master permit
37 requested by the city or town.

1 (a) For the purpose of this section, "act" means that the city
2 makes the decision to grant, condition, or deny the use permit, which
3 may be subject to administrative appeal, or notifies the applicant in
4 writing of the amount of time that will be required to make the
5 decision and the reasons for this time period.

6 (b) Requirements otherwise applicable to holders of master permits
7 shall be deemed satisfied by a holder of a cable franchise in good
8 standing.

9 (c) Where the master permit does not contain procedures to expedite
10 approvals and the service provider requires action in less than thirty
11 days, the service provider shall advise the city or town in writing of
12 the reasons why a shortened time period is necessary and the time
13 period within which action by the city or town is requested. The city
14 or town shall reasonably cooperate to meet the request where
15 practicable.

16 (d) A city or town may not deny a use permit to a service provider
17 with an existing state-wide grant to occupy the right of way for
18 wireline facilities on the basis of failure to obtain a master permit.

19 (3) The reasons for a denial of a master permit shall be supported
20 by substantial evidence contained in a written record. A service
21 provider adversely affected by the final action denying a master
22 permit, or by an unreasonable failure to act on a master permit as set
23 forth in subsection (1) of this section, may commence an action within
24 thirty days to seek relief, which shall be limited to injunctive
25 relief.

26 (4) A service provider adversely affected by the final action
27 denying a use permit may commence an action within thirty days to seek
28 relief, which shall be limited to injunctive relief. In any appeal of
29 the final action denying a use permit, the standard for review and
30 burden of proof shall be as set forth in RCW 36.70C.130.

31 (5) A city or town shall:

32 (a) In order to facilitate the scheduling and coordination of work
33 in the right of way, provide as much advance notice as reasonable of
34 plans to open the right of way to those service providers who are
35 current users of the right of way or who have filed notice with the
36 clerk of the city or town within the past twelve months of their intent
37 to place facilities in the city or town. A city is not liable for
38 damages for failure to provide this notice. Where the city has failed
39 to provide notice of plans to open the right of way consistent with

1 this subsection, a city may not deny a use permit to a service provider
2 on the basis that the service provider failed to coordinate with
3 another project.

4 (b) Have the authority to require that facilities are installed and
5 maintained within the right of way in such a manner and at such points
6 so as not to inconvenience the public use of the right of way or to
7 adversely affect the public, health, safety, and welfare.

8 (6) A service provider shall:

9 (a) Obtain all permits required by the city or town for the
10 installation, maintenance, repair, or removal of facilities in the
11 right of way;

12 (b) Comply with applicable ordinances, construction codes,
13 regulations, and standards subject to verification by the city or town
14 of such compliance;

15 (c) Cooperate with the city or town in ensuring that facilities are
16 installed, maintained, repaired, and removed within the right of way in
17 such a manner and at such points so as not to inconvenience the public
18 use of the right of way or to adversely affect the public health,
19 safety, and welfare;

20 (d) Provide information and plans as reasonably necessary to enable
21 a city or town to comply with subsection (5) of this section,
22 including, when notified by the city or town, the provision of advance
23 planning information pursuant to the procedures established by the city
24 or town;

25 (e) Obtain the written approval of the facility or structure owner,
26 if the service provider does not own it, prior to attaching to or
27 otherwise using a facility or structure in the right of way;

28 (f) Construct, install, operate, and maintain its facilities at its
29 expense; and

30 (g) Comply with applicable federal and state safety laws and
31 standards.

32 (7) Nothing in this section shall be construed as:

33 (a) Creating a new duty upon city or towns to be responsible for
34 construction of facilities for service providers or to modify the right
35 of way to accommodate such facilities;

36 (b) Creating, expanding, or extending any liability of a city or
37 town to any third-party user of facilities or third-party beneficiary;

38 or

1 (c) Limiting the right of a city or town to require an
2 indemnification agreement as a condition of a service provider's
3 facilities occupying the right of way.

4 (8) Nothing in this section creates, modifies, expands, or
5 diminishes a priority of use of the right of way by a service provider
6 or other utility, either in relation to other service providers or in
7 relation to other users of the right of way for other purposes.

8 NEW SECTION. **Sec. 4.** (1) A city or town shall not adopt or
9 enforce regulations or ordinances specifically relating to use of the
10 right of way by a service provider that:

11 (a) Impose requirements that regulate the services or business
12 operations of the service provider, except where otherwise authorized
13 in state or federal law;

14 (b) Conflict with federal or state laws, rules, or regulations that
15 specifically apply to the design, construction, and operation of
16 facilities or with federal or state worker safety or public safety
17 laws, rules, or regulations;

18 (c) Regulate the services provided based upon the content or kind
19 of signals that are carried or are capable of being carried over the
20 facilities, except where otherwise authorized in state or federal law;
21 or

22 (d) Unreasonably deny the use of the right of way by a service
23 provider for installing, maintaining, repairing, or removing facilities
24 for telecommunications services or cable television services.

25 (2) Nothing in this chapter, including but not limited to the
26 provisions of subsection (1)(d) of this section, limits the authority
27 of a city or town to regulate the placement of facilities through its
28 local zoning or police power, if the regulations do not otherwise:

29 (a) Prohibit the placement of all wireless or of all wireline
30 facilities within the city or town;

31 (b) Prohibit the placement of all wireless or of all wireline
32 facilities within city or town rights of way, unless the city or town
33 is less than five square miles in size and has no commercial areas, in
34 which case the city or town may make available land other than city or
35 town rights of way for the placement of wireless facilities; or

36 (c) Violate section 253 of the telecommunications act of 1996, P.L.
37 104-104 (110 Stat. 56).

1 (3) This section does not amend, limit, repeal, or otherwise modify
2 the authority of cities or towns to regulate cable television services
3 pursuant to federal law.

4 NEW SECTION. **Sec. 5.** (1) A city or town shall not place or extend
5 a moratorium on the acceptance and processing of applications,
6 permitting, construction, maintenance, repair, replacement, extension,
7 operation, or use of any facilities for personal wireless services,
8 except as consistent with the guidelines for facilities siting
9 implementation, as agreed to on August 5, 1998, by the federal
10 communications commission's local and state government advisory
11 committee, the cellular telecommunications industry association, the
12 personal communications industry association, and the American mobile
13 telecommunications association. Any city or town implementing such a
14 moratorium shall, at the request of a service provider impacted by the
15 moratorium, participate with the service provider in the informal
16 dispute resolution process included with the guidelines for facilities
17 siting implementation.

18 NEW SECTION. **Sec. 6.** (1) Cities and towns may require service
19 providers to relocate authorized facilities within the right of way
20 when reasonably necessary for construction, alteration, repair, or
21 improvement of the right of way for purposes of public welfare, health,
22 or safety.

23 (2) Cities shall notify service providers as soon as practicable of
24 the need for relocation and shall specify the date by which relocation
25 shall be completed. In calculating the date that relocation must be
26 completed, cities shall consult with affected service providers and
27 consider the extent of facilities to be relocated, the services
28 requirements, and the construction sequence for the relocation, within
29 the city's overall project construction sequence and constraints, to
30 safely complete the relocation. Service providers shall complete the
31 relocation by the date specified, unless the city, or a reviewing
32 court, establishes a later date for completion, after a showing by the
33 service provider that the relocation cannot be completed by the date
34 specified using best efforts and meeting safety and service
35 requirements.

1 (3) Service providers may not seek reimbursement for their
2 relocation expenses from the city or town requesting relocation under
3 subsection (1) of this section except:

4 (a) Where the service provider had paid for the relocation cost of
5 the same facilities at the request of the city or town within the past
6 five years, the service provider's share of the cost of relocation will
7 be paid by the city or town requesting relocation;

8 (b) Where aerial to underground relocation of authorized facilities
9 is required by the city or town under subsection (1) of this section,
10 for service providers with an ownership share of the aerial supporting
11 structures, the additional incremental cost of underground compared to
12 aerial relocation, or as provided for in the approved tariff if less,
13 will be paid by the city or town requiring relocation; and

14 (c) Where the city or town requests relocation under subsection (1)
15 of this section solely for aesthetic purposes, unless otherwise agreed
16 to by the parties.

17 (4) Where a project in subsection (1) of this section is primarily
18 for private benefit, the private party or parties shall reimburse the
19 cost of relocation in the same proportion to their contribution to the
20 costs of the project. Service providers will not be precluded from
21 recovering their costs associated with relocation required under
22 subsection (1) of this section, provided that the recovery is
23 consistent with subsection (3) of this section and other applicable
24 laws.

25 (5) A city or town may require the relocation of facilities at the
26 service provider's expense in the event of an unforeseen emergency that
27 creates an immediate threat to the public safety, health, or welfare.

28 NEW SECTION. **Sec. 7.** A city or town may require that a service
29 provider that is constructing, relocating, or placing ducts or conduits
30 in public rights of way provide the city or town with additional duct
31 or conduit and related structures necessary to access the conduit,
32 provided that:

33 (1) The city or town enters into a contract with the service
34 provider consistent with RCW 80.36.150. The contract rates to be
35 charged should recover the incremental costs of the service provider.
36 If the city or town makes the additional duct or conduit and related
37 access structures available to any other entity for the purposes of
38 providing telecommunications or cable television service for hire,

1 sale, or resale to the general public, the rates to be charged, as set
2 forth in the contract with the entity that constructed the conduit or
3 duct, shall recover at least the fully allocated costs of the service
4 provider. The service provider shall state both contract rates in the
5 contract. The city or town shall inform the service provider of the
6 use, and any change in use, of the requested duct or conduit and
7 related access structures to determine the applicable rate to be paid
8 by the city or town.

9 (2) Except as otherwise agreed by the service provider and the city
10 or town, the city or town shall agree that the requested additional
11 duct or conduit space and related access structures will not be used by
12 the city or town to provide telecommunications or cable television
13 service for hire, sale, or resale to the general public.

14 (3) The city or town shall not require that the additional duct or
15 conduit space be connected to the access structures and vaults of the
16 service provider.

17 (4) The value of the additional duct or conduit requested by a city
18 or town shall not be considered a public works construction contract.

19 (5) This section shall not affect the provision of an institutional
20 network by a cable television provider under federal law.

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

23 (1) No city or town may impose a franchise fee or any other fee or
24 charge of whatever nature or description upon the light and power, or
25 gas distribution businesses, as defined in RCW 82.16.010, or telephone
26 business, as defined in RCW 82.04.065, or service provider for use of
27 the right of way, except ((that)):

28 (a) A tax authorized by RCW 35.21.865 may be imposed ((and)):

29 (b) A fee may be charged to such businesses or service providers
30 that recovers actual administrative expenses incurred by a city or town
31 that are directly related to receiving and approving a permit, license,
32 and franchise, to inspecting plans and construction, or to the
33 preparation of a detailed statement pursuant to chapter 43.21C RCW;

34 (c) Taxes permitted by state law on service providers;

35 (d) Franchise requirements and fees for cable television services
36 as allowed by federal law; and

1 (e) A site-specific charge pursuant to an agreement between the
2 city or town and a service provider of personal wireless services
3 acceptable to the parties for:

4 (i) The placement of new structures in the right of way regardless
5 of height, unless the new structure is the result of a mandated
6 relocation in which case no charge will be imposed if the previous
7 location was not charged;

8 (ii) The placement of replacement structures when the replacement
9 is necessary for the installation or attachment of wireless facilities,
10 and the overall height of the replacement structure and the wireless
11 facility is more than sixty feet; or

12 (iii) The placement of personal wireless facilities on structures
13 owned by the city or town located in the right of way. However, a
14 site-specific charge shall not apply to the placement of personal
15 wireless facilities on existing structures, unless the structure is
16 owned by the city or town.

17 A city or town is not required to approve the use permit for the
18 placement of a facility for personal wireless services that meets one
19 of the criteria in this subsection absent such an agreement. If the
20 parties are unable to agree on the amount of the charge, the service
21 provider may submit the amount of the charge to binding arbitration by
22 serving notice on the city or town. Within thirty days of receipt of
23 the initial notice, each party shall furnish a list of acceptable
24 arbitrators. The parties shall select an arbitrator; failing to agree
25 on an arbitrator, each party shall select one arbitrator and the two
26 arbitrators shall select a third arbitrator for an arbitration panel.
27 The arbitrator or arbitrators shall determine the charge based on
28 comparable siting agreements involving public land and rights of way.
29 The arbitrator or arbitrators shall not decide any other disputed
30 issues, including but not limited to size, location, and zoning
31 requirements. Costs of the arbitration, including compensation for the
32 arbitrator's services, must be borne equally by the parties
33 participating in the arbitration and each party shall bear its own
34 costs and expenses, including legal fees and witness expenses, in
35 connection with the arbitration proceeding.

36 (2) Subsection (1) of this section does not prohibit franchise fees
37 imposed on an electrical energy, natural gas, or telephone business, by
38 contract existing on April 20, 1982, with a city or town, for the
39 duration of the contract, but the franchise fees shall be considered

1 taxes for the purposes of the limitations established in RCW 35.21.865
2 and 35.21.870 to the extent the fees exceed the costs allowable under
3 subsection (1) of this section.

4 NEW SECTION. **Sec. 9.** This act shall not preempt specific
5 provisions in existing franchises or contracts between cities or towns
6 and service providers.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21
8 RCW to read as follows:

9 Each code city is subject to the requirements and restrictions
10 regarding facilities and rights of way under this chapter.

11 NEW SECTION. **Sec. 11.** Sections 1 through 7 and 9 of this act
12 constitute a new chapter in Title 35 RCW.

Passed the Senate March 7, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.