

ORDINANCE NO. 1220

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA DECLARING THE DOCUMENT ENTITLED "TOWN OF WICKENBURG TELECOMMUNICATIONS SERVICE – WIRED FACILITIES IN THE PUBLIC HIGHWAY" DATED AUGUST 2, 2021 AS A PUBLIC RECORD; AMENDING THE TOWN OF WICKENBURG CODE BY AMENDING CHAPTER 8 BUILDING, ARTICLE 8-3 STREET IMPROVEMENTS, SECTION 8-3-3 CONSTRUCTION IN PUBLIC RIGHTS-OF-WAY; LOCATION & RELOCATION OF FACILITIES IN PUBLIC RIGHTS-OF-WAY, BY AMENDING SUBSECTION A PERMIT REQUIRED; CONTENTS OF APPLICATION AND BY ADDING NEW SUBSECTION G TELECOMMUNICATIONS SERVICE – WIRED FACILITIES IN THE PUBLIC HIGHWAYS RELATED TO THE USE OF PUBLIC HIGHWAYS BY TELECOMMUNICATIONS PROVIDERS LOCATING WIRED FACILITIES IN THE PUBLIC HIGHWAYS IN THE TOWN AND THE REGULATION THEREOF; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the Town of Wickenburg, Arizona, in its governmental capacity, owns or holds a legal interest in public roads, streets and alleys and all other dedicated public rights-of-way, Town is responsible for the management of the rights-of-way within Town's boundaries. Pursuant to ARS §§ 9-240, 9-276 and 9-582, the Town has exclusive control of the right-of-way.

WHEREAS, as authorized by ARS § 9-583, *et seq.*, telecommunications providers may use the public rights-of-way in compliance with public highway use requirements.

WHEREAS, the primary purpose of this ordinance is to protect the health, safety, and welfare for the public, and to protect the value of and physical integrity of publicly-owned property and assets, while treating telecommunications providers who install wired facilities in the public highway in a competitively neutral and non-discriminatory manner.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Wickenburg, Arizona, as follows:

Section I. In General.

1. The Code of Wickenburg, Chapter 8 Building, Article 8-3 Street Improvements is hereby amended by amending Section 8-3-3, Construction in Public Rights-of-Way; Location & Relocation of Facilities in Public Rights-of-Way, Subsection A Permit Required; Contents of Application to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

A. Permit Required; Contents of Application

It shall be unlawful for any permittee person or entity to construct, reconstruct, repair, alter, or grade on, upon, below, above or within the public rights-of-way without first obtaining a permit from the Public Works Department as provided in this Section and complying with the Zoning and Subdivision Codes of the Town. An applicant for a permit shall file a complete application with the Town that includes:

1. Name, address and license number of the party doing the work.
2. Location of the work area.
3. Plans attached to the application showing details of the proposed construction. Such plans shall be prepared and sealed by an engineer registered and licensed in the State, unless the permittee demonstrates to the satisfaction of the Town that the work does not warrant imposing this requirement.
4. A traffic control plan in accordance with Subsection b.
5. Estimated cost of alteration.
6. For wireless facilities, all information required in the Standards Terms and Conditions for Wireless Communications Facilities in the Right-of-Way.
7. FOR WIRED FACILITIES, ALL INFORMATION REQUIRED IN SUBSECTION G OF THIS SECTION.
78. Such other information as the town finds reasonably necessary to determine compliance with Town Codes.

2. That certain document entitled "Town of Wickenburg Telecommunications Service – Wired Facilities in the Public Highway" dated August 2, 2021, three copies of which are on file in the Town Clerk's office, is hereby declared to be a public record.

3. That document entitled "Town of Wickenburg Telecommunications Service – Wired Facilities in the Public Highway" dated August 2, 2021 is hereby adopted by reference new Subsection G of Section 8-3-3 of the Wickenburg Town Code as regulations for wired telecommunications facilities in the public highways in the Town.

Section II. Repeal of Conflicting Ordinance.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

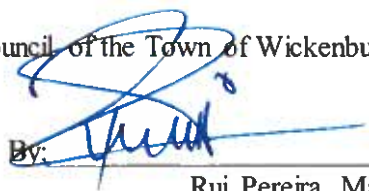
Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a class one misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

PASSED AND ADOPTED by the Town Council of the Town of Wickenburg, Arizona, this 2nd day of August, 2021.

By: 

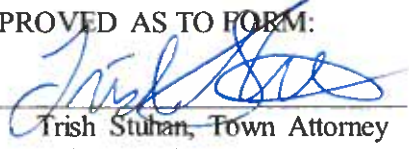
Rui Pereira, Mayor

ATTEST:

By: 

Amy Brown, Town Clerk

APPROVED AS TO FORM:

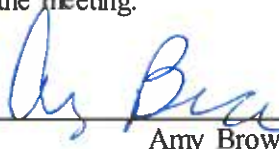
By: 

Trish Stulhan, Town Attorney
Pierce Coleman PLLC

Number of Councilmembers Present: 7
Number of Votes For: 7
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance Number 1220 was duly passed and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 2nd day of August, 2021, and that a quorum was present at the meeting.


Amy Brown, Town Clerk

**TOWN OF WICKENBURG TELECOMMUNICATIONS SERVICE - WIRED
FACILITIES IN PUBLIC HIGHWAYS**

Date: AUGUST 2, 2021

**G. TELECOMMUNICATIONS SERVICE -- WIRED FACILITIES IN THE PUBLIC
HIGHWAYS**

1. Definitions.

In this Paragraph G, unless the context otherwise requires:

“Commercial mobile radio service” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code § 157.

“Environmental laws” means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq. or the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq. or any other applicable federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements.

“Facilities” means the plant, equipment, and property used in the provision of telecommunications services and not owned by the town, including but not limited to wires, pipe, conduits, pedestals, antennas, and other appurtenances placed under the public highways and not owned by the town and used in the provision of telecommunication services. The term does not include wireless facilities as that term is defined in A.R.S. § 9-591 or video services as defined in A.R.S. § 9-591.

“Hazardous substances” means those substances defined as toxic or hazardous substances, pollutants, or wastes by environmental laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

“In-kind payments” means facilities and/or services provided or to be provided by licensee in lieu of all or a portion of the fees imposed by town for the use of the public highway.

“Interstate telecommunications services” means telecommunications services provided between users in Arizona and users outside of Arizona.

“License” means this non-exclusive authorization granted by the town to construct, operate, maintain, reconstruct, repair and remove the facilities of licensee.

“Public emergency” means any condition which, in the opinion of town officials, poses an immediate threat to the lives or property of the citizens of the town or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

“Public highway” or “highway” means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the town.

“System route map” means the map showing the locations of the facilities in the use areas pursuant to a license, as may be amended by town engineer approval of permits for new use areas.

“Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received, as defined in A.R.S. § 9-581. The term does not include commercial mobile radio services, pay phone services, interstate services, wireless services or video services.

“Telecommunications corporation” means any public service corporation to the extent that it provides telecommunications services in this state.

“Telecommunications services” means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used. The telecommunications services of a licensee shall be described in the license approved by the council.

“Use areas” means the initial locations of the facilities of a licensee as set forth in a license and approved new use areas pursuant to Paragraph 4.b(1) of this subsection G.

“User contracts” means contracts a licensee enters into with third parties to use the facilities pursuant to a license.

“Video services” has the same meaning as in A.R.S. § 9-1401.

Wireless services” has the same meaning as in A.R.S. § 9-591.

2. License required.

- a. No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the town unless a license to use the highways to provide telecommunications

services has first been granted by the town council under this chapter to such telecommunications corporation; provided, however, that this chapter does not apply to the installation, maintenance, construction and operation of wireless facilities as that term is defined in A.R.S. § 9-591 or a video service network as that term is defined in A.R.S. § 9-1401.

- b. Notwithstanding Paragraph 2.a above, any telecommunications corporation that was providing telecommunications service within the State of Arizona as of November 1, 1997, pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona constitution, may continue to provide telecommunications services pursuant to that state grant, until and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further grant from the town to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to the telecommunications corporations as provided in Title 9, Chapter 5, Article 7 of the Arizona Revised Statutes.
- c. Nothing in this ordinance shall be deemed to affect the terms or conditions of any license or permit issued by the town prior to the effective date of the amendments of this ordinance or to release any party from its obligations thereunder. Those licenses or permits shall remain fully enforceable in accordance with their terms. The town manager, with the consent of the council, may enter into agreements with licensees or permittees to modify or terminate an existing license or agreement.
- d. A license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities shall not authorize the use of the highways to provide any other service, including video services and wireless services; nor shall the issuance of the same invalidate any license or permit that authorizes the use of the highways for such other services; nor shall the fact that a telecommunications corporation holds a license or permit to make any other use of the highway or to provide any other service, authorize installation, maintenance, construction or operation of telecommunications facilities in any highway in the town, without obtaining a license hereunder.
- e. Any license granted shall not be exclusive.

3. License application.

- a. Any telecommunications corporation desiring a license under this chapter to construct, install, operate and maintain telecommunications facilities in public highways of the town shall file an application with the town clerk requesting a license in the form prescribed by the town and shall pay an application fee in an amount established by resolution of the town council.

Such amount shall be payable in cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the town manager, made payable to the town. No application shall be considered without receipt of said fee. The applicant shall be responsible for reimbursing the town's full reasonable costs in excess of the application fee in processing the application. The application fee is in addition to any permit fees established for persons doing work or locating facilities in the public highway.

- b. Each application shall be in a form provided by the town, and, at a minimum, (1) show where the initial facilities the applicant will use will be located, or contain such other information as the town may deem necessary in order to ensure that the applicant will comply with requirements for use of the highways; (2) identify the applicant, its name, address and telephone number; (3) contain a description of the services to be provided; and (4) set out a description of any agreement with any other entity that would permit such entity to use the facilities.
- c. Each applicant shall provide a letter of credit in favor of the town in the amount of \$100,000 to be in effect during construction of the initial system build out. The letter of credit shall then be reduced to \$50,000 for the remaining term of the license.
- d. Upon receiving an application for a license that satisfies the conditions of Paragraph 3.b above, the town shall promptly proffer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the license, the request shall be submitted to the council with a recommendation for approval.

4. Conditions of license.

- a. As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the town may require:
 - (1) Proof that the applicant has received a certificate of public convenience and necessity from the Arizona Corporation Commission;
 - (2) The applicant to agree to comply with highway use requirements that the town may establish from time to time;
 - (3) The applicant to agree to provide and maintain accurate maps showing the location of all its facilities and the facilities it will use in the highways within the town, and to comply with such other mapping requirements as the town may establish from time to time; applicant shall provide the town with electronic mapping

information in a format compatible with the current town electronic mapping;

- (4) The applicant to obtain the insurance, and provide proof of insurance as required by the town; to post the performance bonds and security fund required by the town; and to agree to fully indemnify the town, its officers, agents, boards and commissions, in a form satisfactory to the town; and agree that it shall have no recourse whatsoever against the town or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of the town because of the enforcement of the license or because of defects in this chapter or the license issued;
 - (5) The applicant to agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the town.
- b. Every license shall be subject to the following administrative and enforcement provisions:
- (1) The permission granted by a license is limited to the use areas, which shall be identified in the system route map attached to an approved license. New use areas may be approved upon application for a permit pursuant to Section 8-3-3, Paragraphs A through D for such new use areas. The applications shall include specific information on the location of the new use areas and the proposed facilities. Upon approval by the town engineer, the new use areas shall be depicted on the system route map and shall be subject to all terms and conditions of the license and lawful conditions, if any, imposed by the town.
 - (2) A licensee's facilities shall meet the applicable standard specifications and requirements of the town. Licensee's use of the public highway shall be according to plans approved by the town engineer, provided that such approval shall not be unreasonably withheld or delayed. Facilities shall not be located aboveground unless there is no practical alternative and any such facilities shall be earth-toned colors or screened to the extent reasonably practical. Licensee's installation of facilities shall be coordinated with the town to accommodate opportunities for common installation. Prior to the start of any construction work, licensee shall notify all affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures in order to allow them to make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area. If

an emergency requires activity without such written notice, the licensee shall use reasonable efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Licensee shall identify a representative, such as a project manager, who shall be the contact person for the town during any construction periods.

- (3) A licensee shall maintain "as-built" drawings of its facilities located within the public highway and furnish a copy electronically in a mapping format compatible with the current town electronic mapping format and in hard copy form. Upon completion of new or relocation construction of underground facilities in the public highway, licensee shall create and maintain precise, up-to-date maps of any of its facilities and any aboveground equipment located in the public highway and precise and verifiable horizontal and vertical location information and will make this information available to the town upon the installation of any new facilities. A licensee will also provide surface-location marking of licensee's facilities that are located underground within any public highway within thirty (30) business days of installation. If complete updates are not provided in a compatible format, licensee shall pay the actual, reasonable costs the town incurs to update the town's electronic mapping format due to the location or relocation of the licensee's facilities. In the event licensee fails to supply records in the town specified format and there is a cost to the town in converting licensee-provided files, licensee will be responsible for the conversion costs and will pay such costs within thirty (30) days of the date of the bill from the town invoicing the amount due.
- (4) The authority granted by a license does not authorize licensee's use of the facilities for the construction, installation or operation of wireless facilities, a cable television system, a cable system, or a video services system or authorize the licensee to operate as a cable operator or video services provider as those terms are defined in the Communications Act of 1934, state law, or the town code. The authority granted by a license does not authorize the use of the public highway for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the Federal Communications Commission. The authority granted by a license is not in lieu of any other license or franchise the town may require to occupy the public highways to provide service other than as authorized under a license.
- (5) A licensee shall comply with rules and regulations of the Federal Communications Commission and Arizona Corporation Commission that apply to the services that licensee provides over

the facilities in the public highway.

- (6) In order for the town to determine a licensee's compliance with the terms of a license, within 30 days of a request for disclosure by the town, the licensee shall provide the documentation requested by town. For purposes of confirming that the licensee is providing solely services authorized under a license, upon reasonable request and notice by the town, the licensee shall make available for joint inspection and testing as requested by the town, the current services being provided by licensee through the facilities authorized by a license. If the licensee determines that in order to respond to the town's request for documentation and inspection that it must reasonably provide proprietary information, the licensee shall so designate such claim to proprietary treatment on documents provided to the town.
- (7) If the facilities of a licensee or any other licensee equipment, improvements or activities within the use areas present any immediate hazard or impediment to the public, to the town, to other improvements or activities within or without the use areas, or to the town's ability to safely and conveniently operate the public highway or perform the town's utility, public safety and other public health, safety and welfare functions, then licensee shall immediately remedy the hazard, comply with the town's requests to secure the use areas, and otherwise cooperate with the town at no expense to town to remove any such hazard or impediment. Licensee's work crews shall report to the use areas within four (4) hours of any request by the town under this paragraph.
- (8) If a licensee abandons use of its facilities, or upon cancellation, revocation or termination of a license, licensee shall notify the town and may, subject to the town's approval, permanently abandon the facilities in place. In lieu of permanent abandonment, the town may require a licensee to the reasonable satisfaction of the town and, without cost or expense to the town, promptly to remove its facilities and to restore the public highway. If a licensee fails or refused to remove the facilities required by town to be removed, the town may do so and licensee shall pay the cost of such removal and the restoration of the highway. Upon permanent abandonment, if the town does not require removal, a licensee shall submit to the town a proposal and instruments for transferring ownership to the city. Any facilities which are not removed within one hundred twenty (120) days of the town's written request automatically shall become the property of the town. The Arizona Blue Stake Center must be notified to record abandoned facilities.

- (9) Any and all rights granted to a licensee shall be subject to the prior and continuing right of the town to use the public highway, including the use areas. Any and all rights granted to a licensee shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect the public highway. A license shall be construed to grant, convey, create or vest a perpetual real property interest in land to a licensee.
- (10) A licensee accepts the risk that there may now or in the future exist in the use areas other work and improvements that the town may approve from time to time. The town shall have full authority to regulate use of the use areas and to resolve competing demands and preferences regarding use of the use areas and to require a licensee to cooperate and participate in implementing such resolutions.
- (11) Neither the town nor any agent, contractor or employee of the town shall be liable to a licensee, its customers or third parties with user contracts for any service disruption or for any other harm caused them or the facilities due to competing uses of the public highway.
- (12) A licensee may enter into user contracts with unrelated third parties in the ordinary course of the licensee's business for use of portions of the facilities of the licensee. All such third parties shall obtain a license from the town pursuant to A.R. S. § 9-583, Paragraph D. No person shall transmit data over the facilities of the licensee or otherwise use the facilities except under a user contract with a licensee. The licensee shall provide to town (i) the name of the third party, (ii) the name, title, address, telephone number, and email address of a person with authority to speak for the third party, (iii) the route of the proposed service, and (iv) any other information relevant to the use of the public highway by the third party reasonably requested by the town.
- (13) All signage is prohibited except that a licensee shall install and thereafter maintain all signs and markings that the facilities and the licensee's activities may make necessary for safe use of the use areas by the public, the town, licensee and other persons who may be at the use areas at any time for any reason.
- (14) Licenses shall be personal to the licensee. Except as provided in the license, no transfer of a license or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the town and

the town's prior written consent is obtained, which consent will not be unreasonably withheld or delayed. In making a determination as to whether to approve a transfer, the town may consider the same information and qualifications required of an original application for a license; whether the licensee is in compliance with its license and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the town's interest. No application for a transfer of a license shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of the chapter and the license, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee under this chapter and the license for all purposes, including renewal. Approval by the town of a transfer of a license does not constitute a waiver or release of any of the rights of the town under this chapter or the license, whether arising before or after the date of the transfer.

- (15) Every licensee shall be subject to the town's exercise of such police, regulatory and other powers as it now has or may later obtain, and a license may not waive the application of the same.
- (16) Every license shall be subject to revocation if the licensee fails to comply with the material terms and conditions of the license, or applicable law; provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance, and fails to cure the performance within sixty (60) days of the notice, except where the town finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked if the licensee requests a hearing.
- (17) Activities of a licensee and contractors of a licensee in the public highway shall be subject to environmental laws, now or hereafter imposed. A licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any hazardous substances upon or about the public highway. These prohibitions shall not apply to: (i) ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the highway, and any such materials shall be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and

machinery, or small portable tanks that are being used for fueling permitted construction machinery, and (ii) electric backup batteries and other materials that may contain hazardous substances that are commonly used in the provision of telecommunications services. Disposal of hazardous substances shall be in accordance with environmental law. A licensee shall promptly notify the town of any hazardous substance at any time discovered or existing upon the highway. Within twenty-four hours after any violation by a licensee or its contractors of this license pertaining to hazardous substances, the licensee shall give the town notice reporting such violation.

- (18) The town shall have the right, because of a public emergency, to sever, disrupt, remove, tear out, dig up or otherwise damage and/or destroy facilities of a licensee without any prior notice to licensee, if the action is deemed necessary by the town manager. In such event, the town shall not be liable to the licensee, its contractors or its customers or their parties for any harm so caused to them or the facilities except due to gross negligence or willful misconduct of town. The town shall inform the licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the town.
- (19) Penalties for violation of license.
 - (A) Damages for violation of the license terms. Any remedies available to the town are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license or pursuant to any indemnity clause.
 - (B) A requirement that if the licensee fails to pay amounts owed to the town by the time prescribed for payment, the licensee shall pay interest on the amounts owed, at the rate of one percent (1%) per month.
 - (C) A requirement that licensee shall produce books and records for the town's inspection and copying, prepare reports, respond to questions and permit the town to have access to its facilities as the town may request in order to determine whether licensee has complied with its obligations under the license, or other applicable law.

- c. A licensee that receives a telecommunications service license pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirements of state law.
- d. Any license granted by the town pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the licensee within thirty (30) days of the grant. The license shall be effective for a period of five (5) years, and subject to the conditions and restrictions provided in the instrument and this chapter.

5. Compensation.

- a. The town shall not levy a tax, rent, fee or charge to a telecommunications corporation for the use of a public highway to provide telecommunications services, or levy a tax, fee or charge upon the privilege of engaging in the business of providing telecommunications services, except that, in connection with its provisions of telecommunications services and its use of the highways to provide the same, each telecommunications corporation shall:
 - (1) Pay a transaction privilege tax on the business of providing telecommunications services or applicable use tax.
 - (2) Pay public highway construction permit fees established from time to time by the town pursuant to Section 8-3-3, Paragraphs A through D.
 - (3) Pay all reasonable costs associated with the construction, maintenance and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways.
 - (4) A telecommunications corporation that has placed facilities in public highways that carry interstate traffic between and among the telecommunication corporation's points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls, shall pay an annual fee based on the number of linear feet of trench in the public highways. The rate per linear foot shall be set by council resolution and shall not exceed the highest rate per linear foot a political subdivision charged a licensee on or before December 31, 1999. The rate per linear foot shall not be increased in any year by more than the increase in the average Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics.
 - (5) The licensee may provide in-kind benefits such as facilities or services to the town if agreed to by the town and licensee. The

calculation of the in-kind benefits shall be set forth in the license. Any in-kind facilities provided to the town under the license shall remain in possession and ownership of the town after the term of the license expires. The value of in-kind benefits shall be less than or equal to, and may be offset against, payments of interstate linear foot charges or transaction privilege tax on the business of providing telecommunications service owed to the town, but shall not be offset for any combination of intrastate and interstate charges.

- b. If the licensee disputes the amount of town construction permit fees or other fees payable under this chapter, the matter shall be referred to a dispute resolution board. The board shall consist of three (3) members agreed upon by both parties. Expenses for the board shall be shared equally by the town and the licensee. The board will hear the dispute promptly, and render a decision within twenty (20) days after the hearing. All decisions of the board are non-binding on the town and the licensee; however, the findings of the board shall be admissible in any legal action. The town and the licensee shall accept or reject findings of the board within thirty (30) days after receipt of the findings. If damages are assessed by the board, the licensee shall pay town within thirty (30) days of receipt of an invoice. Late charges of five percent (5%) and interest charges of one and one-half percent (1.5%) per month shall be added for late payment.
- c. If an application for a license is denied, the town manager will provide the applicant with a written justification for the denial with references to the applicable statutes, ordinances, codes or substantive policy statements on which the denial is based. The notice of denial will explain the applicant's right to protest the denial to the town council, that the applicant must specify the basis for its protest, including a description for why it believes the town council incorrectly denied the license, and that the protest must be filed within 20 working days of the date of the denial.