

Telecommunications and Real Estate: Municipal Aspects

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I. Municipal Aspects of Leases and Conditional Sale Agreements for Cellular Antenna Towers

A. Federal Telecommunications Act of 1966 (47 USC 332(c))

1. General statement of municipal authority: “Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities”.
2. Limitations.
 - “i. The regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government or instrumentality thereof –
 - a. shall not unreasonably discriminate among providers of functionally equivalent services; and
 - b. shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
 - i. A state or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of

- time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- ii. Any decision by a state or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
 - iii. No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
 - iv. Any person adversely affected by any final action or failure to act by a state or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a state or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief."
3. Case law has been decided in favor of, and against, local municipalities administering this provision. See, e.g., copy of *Sprint v Charter Township of West Bloomfield* attached to these materials.

B. Issues Relevant to Private Leases and Conditional Sales

1. Whether a facility is permissible on particular property.
 - i. Zoning districts in which facilities may be located as a matter of right.
 - ii. Zoning districts in which facilities may be located only following special use approval.
2. Typical regulations found in zoning ordinances.
 - i. Requirement for the use of existing structures, if available.
 - ii. Harmony with surrounding area.
 - iii. Minimum height in order to achieve service needs.
 - iv. Setback requirements.
 - v. Access easement to structure for maintenance.
 - vi. Architectural compatibility for rooftop structures.

- vii. Adequate support system.
- viii. Required signatures on application – potential liability/hold harmless.
- ix. Landscaping requirements.
3. Lot split issue.
4. Co-location requirements.
5. Removal requirements following useful life.

II. Municipal Aspects of Right-of-Way Regulation with Regard to Leases and Conditional Sale Agreements in Which there is a Demand/Obligation for Telecommunication Service

A. Leases and Conditional Sale Agreements.

This subject relates to leases and conditional sale agreements calling for specified telephone and/or voice/data services for residential and/or business purposes.

B. Michigan Constitution.

There are two provisions in the Michigan Constitution that relate to this subject in terms of municipal regulatory authority, Const 1963, Article VII, § 16 and Article VII, § 29. The former provision provides that the legislature may pass laws for counties and townships to construct and maintain highways; and, the latter provision specifies the right of local municipalities to reasonable control of highways. Thus, while public utilities may have the right to utilize highways, they may not do so without the consent of the respective county, township, city or village.

C. Michigan Telecommunications Act.

1. In general the Michigan Telecommunications Act amounts to a purported restriction and limitation upon local governmental authority and control over highways.
2. The provisions of the Act reflect a legislative intent to deregulate and encourage competition in the provision of telecommunication services.
3. Local governments are basically required to grant permits for access to and ongoing use of road rights-of-way to providers of telecommunications services. MCL 484.2251(1)
4. However, in the review and approval of a provider's access to and use of the rights-of-way, the local government is authorized to ensure and protect the health, safety, and welfare of the public. MCL 484.2251(2)
5. Local governmental approval or denial of an application for an access permit must be provided within 90 days. MCL 484.2251(3)

6. A right-of-way access permit may not be unreasonably denied. MCL 484.2251(3)
7. The government, as a condition to issuing a permit, may require a bond in an amount not exceeding the reasonable cost to ensure restoration of the road rights-of-way during and after use by the provider. MCL 484.2251(3)
8. The government may impose other conditions on a permit, limited to the telecommunications provider's access and use of the rights-of-way. MCL 484.2252
9. Fees or assessments in connection with a right-of-way permit must be nondiscriminatory and must not "exceed the fixed and variable costs to the local unit of government in granting a permit and maintaining the rights-of-way, easements, or public places used by a provider". MCL 484.2253

Exhibit A

Sprint Spectrum LP v Charter Township of West Bloomfield

View online at <http://www.icle.org/partners/materials/2001CP7193/20012B7193-exa.pdf>.

Exhibit B

Supplemental Outline

View online at <http://www.icle.org/partners/materials/2001CP7193/20012B7193-exb.pdf>.

Exhibit C

The CLEC Association of Michigan

View online at <http://www.miact.org/CLECA/clecrelease.doc>.

Exhibit D

Article "Whose Road is it Anyway?" by Gary L. Dovre

View online at <http://www.icle.org/partners/materials/2001CP7193/20012B7193-exd.pdf>.

Exhibit E

Speech to Michigan Alliance for Competitive Telecommunications by James K Glassman

View online at <http://www.icle.org/partners/materials/2001CP7193/20012B7193-exe.pdf>.

Exhibit F

Senate Bill No. 880

View online at <http://www.michiganlegislature.org/documents/2001-2002/billintroduced/senate/pdf/2001-SIB-0880.pdf>.

Exhibit G

MIOP Inc v City of Grand Rapids

View online at <http://www.icle.org/partners/materials/2001CP7193/20012B7193-exg.pdf>.