



Placement of Wireless Network Facilities Within Highway Right-of-Ways

Proposed Action for County Road Commissions

December 29, 2016

Liability

Strategic Risk Management Guideline

Issue SRM201612-4

How Road Commissions can prepare to process right-of-way permits for placement of wireless network facilities

The Problem: DAS Permits

County Road Commissions around Michigan have recently received an influx of right-of-way permit requests for the construction of wireless network facilities called Distributed Antenna Systems (DAS). These systems are designed to promote stronger wireless Broadband signals and better connectivity for new technologies, including driverless cars. We expect these permit applications to proliferate across the state.

However, there have been some problems with processing these DAS right-of-way applications because of the shared authority over right-of-ways held by Road Commissions and municipalities. At times, after a DAS installer has obtained a permit (often a Metro Act permit) from a municipality, the installer views a Road Commission permit as a mere formality—or even entirely unnecessary. This can lead to refusal to comply with permit requirements or even legal challenges to those requirements.

The Solution: Cooperation

To avoid these problems, MCRC SIP has prepared the letter that follows for each Road Commission to send to every municipality in its County. The letter is meant to inform the municipalities of the issues surrounding DAS right-of-way permits, and to promote intergovernmental cooperation.

By reaching out and fostering cooperation now, Road Commissions should be able to establish a unified front with their local municipalities. This will help ensure that DAS installations are implemented safely, under the coordinated supervision and fully informed consent of both the local municipality and the Road Commission. Achieving this goal will further the interests of the public in safe and convenient right-of-ways, and will help Road Commissions avoid unnecessary litigation.

Right-of-Way Permit Authority

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*MCL 224.19b(1) states in part: A person, partnership, association, corporation or governmental entity shall not construct, operate, maintain or remove a facility or perform any other work within the right-of-way of a county road except sidewalk installation and repair **without first obtaining a permit from the county road commission having jurisdiction over the road** and from the township, city or village in which the county road is located when a permit is required by ordinance of the township, city or village, pursuant to authority conferred by article VII, section 29 of the Michigan constitution of 1963.*



[**DATE]

[**Mr./Ms. NAME]

[**OPTIONAL TITLE]

[**ADDRESS]

[**ADDRESS]

[**ADDRESS]

Re: **Placement of Wireless Network Facilities Within Highway Right-of-Ways Under the
Jurisdiction of the [**COUNTY NAME] County Road Commission**

Dear [**OPTIONAL TITLE AND NAME]:

This letter is written to seek the assistance of all Cities, Villages and Townships (“municipalities”) in processing requests to place wireless network facilities, including poles, conduit, towers, and related hardware, whether underground or above ground, in the [**COUNTY NAME] County Road Commission (“Road Commission”) road rights-of-way. These activities are subject to the Road Commission’s constitutional right to reasonable control over its highways, streets, alleys, and public places and require a permit from the Road Commission.¹ At the same time, the Road Commission recognizes the coincident or concurrent rights of municipalities to reasonable control over their highways, streets, alleys, and public places.² The Road Commission believes that cooperation and coordination among all levels of government involved in processing these requests is essential to ensure that the public’s interests are best served. This letter is the first step in the Road Commission’s efforts toward that goal.

Recently, a County Road Commission was sued by a self-described Distributed Antenna System (DAS) and fiber optic cable installer because the Road Commission stopped work on a specific project. That stop-work order was issued as a result of (1) the Road Commission’s discovery that the alleged DAS Company and its contracted fiber optic cable installer had improperly located township-permitted poles in the county road right-of-way contrary to the Road Commission’s permits, and (2) a subsequent review of a legal opinion from the attorney for the County Road Association of Michigan advising that placements of such DAS installations in county road right-of-ways are not entirely subject to the Metro Act.

Several other municipalities have also received requests to place cable, fiber optic cable, antennas, and related structures in the right-of-way of county roads. Some requests were submitted as Metro Act applications; some requests were not. However, when these applications were approved by the municipality, the requesting company often then claimed a “right” to install its equipment without a Road Commission permit. No such right exists, even where Metro Act Permits are involved: paragraph 4.8 of the State Metro Act Permit provides that all applicants “shall secure all necessary permits, licenses, and approvals” from all levels of government. Nonetheless, the claim of a “right” based upon a prior permit issued by a municipality has a tendency to place the Road Commission in a difficult position.

¹ Michigan Constitution 1963 Art. VII, Sec. 29; MCL 224.19(b); and MCL 247.184.

² Michigan Constitution 1963 Art. VII, Sec. 29; MCL 247.183; and MCL 484.3101. *et seq.*

The Road Commission's first priority is the safety of those who use public highways in [**COUNTY NAME] County. Each and every obstacle in the right-of-way of a public road becomes a potential hazard for an out-of-control vehicle. While it is clear that some reasonable use of the road right-of-ways for placement of surface and sub-surface non-transportation related infrastructure will occur, any use of the road right-of-ways for non-transportation purposes must be prudent and well planned.

Accordingly, at this time, the Road Commission requests that whenever your municipality receives an application for an installation in the right-of-way of a county road, whether framed as a Metro Act request or otherwise, a copy of the request be immediately forwarded to [**MANAGER/ENGINEER NAME], [**COUNTY NAME] Road Commission, at the following addresses:

Surface Mail:	[**MANAGER/ENGINEER NAME] [**COUNTY NAME] County Road Commission [**ADDRESS] [**ADDRESS]
Email:	[**EMAIL ADDRESS]
Fax:	[**FAX NUMBER]

The Road Commission will then review the request for safety considerations and legality. Your municipality can perform its own review concurrently to ensure that the request complies with all applicable state and local law, including your rules, codes, and zoning ordinances. Ideally, the Road Commission and your municipality will act upon the request in a consistent and timely manner, and any necessary permits can be issued with joint consent. If either governmental entity objects to the request, then further discussions with the applicant can occur. If the areas of concern cannot be resolved, then a denial of the request can be posted to the applicant by the respective unit(s) of government pursuant to their coincident or concurrent authority.

We must also keep in mind that both Michigan and Federal law speak to some of the applications, giving a limited time to deny a permit request. By Michigan law, the response time could be as short as forty-five (45) days; under federal law, issuance of a notice of incompleteness could be required within thirty (30) days. Therefore, we must be expeditious in the processing of these requests.

Please feel free to share this letter with your municipal attorney. Thank you for your anticipated cooperation. Together we will protect the continued safety of the motoring public.

Sincerely,

[**MANAGER/ENGINEER NAME, PE/Ph.D./etc].
[**OFFICIAL TITLE]