

Telecommunications Franchise (including wireless and data services) User Notes

A city may require telecommunications providers to obtain a franchise before placing their facilities within the public rights-of-way. RCW 35.99.030. [1] But, a city may not use a franchise agreement to “regulate the services or business operations of the service provider...” unless state or federal law authorizes such regulation. RCW 35.99.040(1)(a).

The term “telecommunications” covers a broad (and growing) list of information services. As defined in RCW 35.99.010(7), telecommunications is:

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

Note: The reader should be aware that wireless service providers can legally operate within a city’s borders without a franchise, if the provider’s cell towers are all located on private property. A city approached by a cellular provider wishing to place its facilities on public property or within the public rights-of-way may lease such locations to the provider. RCW 35.21.860.

Note: Although cable television is a telecommunications service, there are substantial differences between the federal regulations governing cable and those governing other telecommunications services. Cable franchises are addressed in a separate user note.

[1] The exception is that a city may not require “a service provider with an existing statewide grant to occupy the right of way” to obtain a franchise. RCW 35.99.030. See *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (2001) for a discussion of statewide grants.

State and Federal Statutes

Federal Statutes

- Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), codified in Title 47 USC. In particular, § 253(c) of the Act (codified at 47 USC § 253(c)) specifically preserves the right of cities to regulate their rights-of-way:

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory

basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

Washington Statutes

- RCW Chapter 35.99, Telecommunications, cable television service — use of right of way. This chapter sets forth the procedures for granting telecommunications franchises in compliance with the Telecommunications Act of 1996.
-

Regulatory Agencies

- Federal Communications Commission (FCC)
 - Washington Utilities and Transportation Commission (WUTC)
-

Additional and Altered Paragraphs for the Franchise Form

The following section is intended to be added to a franchise for cellular services if the city's municipal code does not have a colocation requirement.

Section 00. Colocation of Facilities

A. To the extent practicable, Grantee shall allow other cellular providers to colocate their facilities on Grantee Facilities or at the site of Grantee Facilities. The City reserves the right to notify other cellular providers of this requirement, and of the location of Grantee Facilities, to promote collocation on Grantee Facilities.

B. It shall be a condition of any permit granted for construction or placement of any Grantee Facility in the Franchise Area not to be colocated on an existing facility, that the Grantee Facility shall be designed to accommodate colocation of cellular telecommunication antennas according to the following:

1. For towers up to 150 feet in height, the structure and fenced compound shall be designed to accommodate at least two providers.

2. For towers greater than 150 feet in height, the structure and fenced compound shall be designed to accommodate a least three providers.

C. It shall be a condition of any permit granted for construction or placement of any Grantee Facility in the Franchise Area that Grantee demonstrate to the City's satisfaction that no existing facility can accommodate the proposed Grantee Facility. All evidence submitted shall be signed and sealed by appropriate licensed professionals or qualified industry experts, and shall consist of one or more of the following:

1. That no existing towers or suitable alternative tower structures are located within the geographic antenna placement area required to meet the applicant's engineering requirements.

2. That existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.

3. That existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.

4. That the applicant's proposed antenna(s) would cause electromagnetic interference with the antenna(s) on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

5. That the cost or contractual provisions required by the tower owner to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

6. That the applicant adequately demonstrates that there are other limiting factors that render existing towers and structures unsuitable

- [General Franchise Form](#)