S T A T E O F N E W Y O R K

4728

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to enacting the "state public rights-of-way act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general municipal law is amended by adding a new article 19-C to read as follows:

ARTICLE 19-C

STATE PUBLIC RIGHTS-OF-WAY ACT

SECTION 991. SHORT TITLE.
991-A. LEGISLATIVE INTENT.
991-B. DEFINITIONS.
991-C. APPLICABILITY.
991-D. RIGHTS-OF-WAY PERMIT.
991-E. RESTRICTIONS ON THE ABILITY OF POLITICAL SUBDIVISIONS TO FURTHER REGULATE THE ACTIVITIES OF TELECOMMUNICATIONS SERVICE PROVIDERS.
991-F. APPLICATION FOR CONSTRUCTION PERMITS.
991-G. RESTORATION.
991-H. JUDICIAL REVIEW.
991-I. RELOCATION OF FACILITIES.
991-J. INDEMNIFICATION.
991-K. INSURANCE.
991-L. BONDS.
991-M. SEVERABILITY.

S 991. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "STATE PUBLIC RIGHTS-OF-WAY ACT".

S 991-A. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT IT IS IN THE BEST INTEREST OF THE STATE TO ENACT THE PROVISIONS OF THIS ARTICLE IN ORDER TO:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) PROVIDE AND ADVANCE LOCAL GOVERNMENTAL INTEREST IN THE DEPLOYMENT OF ADVANCED TELECOMMUNICATION SERVICES, FACILITIES BASED COMPETITION, AND IMPLEMENTATION OF NETWORK REDUNDANCY BY TELECOMMUNICATION'S PROVIDERS WHICH ACTIONS ARE NECESSARY NOT ONLY TO PROTECT AGAINST NETWORK OUTAGES, BUT ALSO TO ENSURE THE SAFETY AND SECURITY OF THE PUBLIC AND INCREASE ECONOMIC DEVELOPMENT IN THE PERTINENT POLITICAL SUBDIVISION WHEREIN SUCH TELECOMMUNICATIONS PROVIDER OPERATES OR CONDUCTS BUSINESS;

(B) RECOGNIZE THAT POLITICAL SUBDIVISIONS HAVE AN IMPORTANT ROLE IN MANAGING THE PUBLIC RIGHTS-OF-WAY;

(C) PRECLUDE MUNICIPAL EFFORTS TO REGULATE TELECOMMUNICATIONS SERVICE PROVIDERS, RATES, SERVICES, SERVICE QUALITY, OPERATIONS, FINANCIAL QUALIFICATIONS, AND OTHER MATTERS NOT SPECIFICALLY AND DIRECTLY RELATED TO THE TIME, PLACE AND MANNER OF ENTRY INTO THE PUBLIC RIGHTS-OF-WAY IN A MANNER INCONSISTENT WITH FEDERAL TELECOMMUNICATIONS ACT OF 1996;

(D) STREAMLINE THE PROCESS FOR AUTHORIZING ACCESS TO, AND USE OF, THE PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATION SERVICE PROVIDERS;

(E) PROVIDE FOR THE NON-DISCRIMINATORY AND COMPETITIVELY NEUTRAL REIMBURSEMENT OF THE POLITICAL SUBDIVISION'S EXPENSES APPLICABLE TO A TELECOMMUNICATIONS SERVICE PROVIDER'S USE OF THE PUBLIC RIGHTS-OF-WAY, BASED ON THE REASONABLE, ACTUAL AND DIRECT COST INCURRED BY A POLITICAL SUBDIVISION IN REVIEWING CONSTRUCTION PERMIT APPLICATIONS AND INSPECTING CONSTRUCTION SITES;

(F) REQUIRE THAT PERMITS FOR ACCESS TO AND USE OF THE PUBLIC RIGHTS-OF-WAY ARE ISSUED WITHIN A FIXED AND REASONABLE TIME, NOT TO EXCEED THIRTY DAYS FROM THE DATE OF APPLICATION FOR SUCH PERMIT; AND

(G) ENSURE RAPID AND EFFECTIVE REVIEW AND DISPOSITION OF DISPUTES RELATED TO THE USE OF PUBLIC RIGHTS-OF-WAY.

S 991-B. DEFINITIONS. AS USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "BARRIER TO ENTRY" MEANS ANY LOCAL LAW, RULE OR REGULATION OR ACTION TAKEN BY A POLITICAL SUBDIVISION THAT DOES NOT RELATE TO THE TIME, PLACE AND MANNER OF ENTRY TO A PUBLIC RIGHT-OF-WAY, INCLUDING, BUT NOT LIMITED TO: (I) REQUIRING FEES GREATER THAN THE COSTS OF MANAGING THE PUBLIC RIGHTS-OF-WAY. FEES SUCH AS FRANCHISE FEES, GROSS REVENUE FEES, RENT CHARGES OR OTHER CHARGES BASED ON A PERCENTAGE OF REVENUE, PER LINEAR FOOT FEES, FREE CONDUIT, FIBER OR SERVICES OR ACCESS LINE FEES, FREE OR DISCOUNTED FACILITIES AND SERVICES OR ANY OTHER FEE OF A SIMILAR OR COMPARABLE NATURE SHALL BE CONSIDERED A BARRIER TO ENTRY;

(II) REQUIRING TELECOMMUNICATIONS SERVICE PROVIDERS TO ENTER INTO AGREEMENTS, FRANCHISES, LICENSES, OR ANY OTHER CONTRACTUAL UNDERSTANDING THAT PURPORT TO GRANT THE POLITICAL SUBDIVISION ANY AUTHORITY OTHER THAN THAT IS CONTAINED IN THIS ARTICLE;

(III) REGULATING ANY SERVICES, RATES OR TERMS AND CONDITIONS OF ANY TELECOMMUNICATIONS SERVICE PROVIDER'S PROVISION OF SERVICES;

(IV) REQUIRING ANY FINANCIAL, TECHNICAL OR MANAGERIAL INFORMATION BE FILED OR REPORTED;

(V) REQUIRING CONSENT FOR ASSIGNMENT OR CHANGE IN CONTROL OF THE ASSETS OR OWNERSHIP OF A TELECOMMUNICATIONS SERVICE PROVIDER;

(VI) REQUIRING THE WAIVER OF ANY LEGAL RIGHTS, OR ACKNOWLEDGMENTS OF AUTHORITY BY THE POLITICAL SUBDIVISION IN EXCHANGE FOR ISSUANCE OF A LICENSING AGREEMENT, FRANCHISE, PERMIT OR APPROVAL TO CONSTRUCT;

(VII) ENTERING INTO ANY EXCLUSIVE ARRANGEMENTS WITH ANY TELECOMMUNICATIONS SERVICE PROVIDER;

(VIII) THE FAILURE TO ACT WITHIN THE TIME FRAMES SET FORTH IN THIS ARTICLE;

(IX) UNREASONABLE BOND, INSURANCE AND INDEMNIFICATION REQUIREMENTS;

(X) CHARGES, AMOUNTS OR FEES IN EXCESS OF THOSE WHICH COVER THE ACTUAL COST OF RESTORING THE PUBLIC RIGHTS-OF-WAY TO ITS PRE-EXISTING CONDITION, NORMAL WEAR AND TEAR EXCEPTED;

(XI) TREATING A TELECOMMUNICATIONS SERVICE PROVIDER IN A DISCRIMINATORY OR NON-COMPETITIVELY NEUTRAL MANNER; AND

(XII) REQUIRING THAT TELECOMMUNICATIONS SERVICE PROVIDERS PLACE, LOCATE OR CONSTRUCT THEIR FACILITIES UNDERGROUND.

(B) "COST" MEANS THE REASONABLE DIRECT INCREMENTAL COST INCURRED BY A POLITICAL SUBDIVISION AS A RESULT OF A TELECOMMUNICATIONS SERVICE PROVIDER'S USE OF THE PUBLIC RIGHTS-OF-WAY, INCLUDING BUT NOT LIMITED TO, THE POLITICAL SUBDIVISION'S EXPENSES INCURRED IN REVIEWING ENGINEERING PLANTS OR CONSTRUCTION APPLICATIONS, AND INSPECTING JOB SITES, PROVIDED, HOWEVER, THAT COST SHALL NOT INCLUDE FRANCHISE FEES, GROSS REVENUE FEES, RENT CHARGES, PER LINEAR FOOT CHARGES, ACCESS LINE CHARGES, FREE CONDUIT, FIBER OR SERVICES, OR ANY OTHER FEE OF A SIMILAR OR COMPARABLE NATURE PAYABLE BY A TELECOMMUNICATIONS SERVICE PROVIDER FOR USE OF THE PUBLIC RIGHTS-OF-WAY.

(C) "MANNER" MEANS CONSTRUCTION RELATED REQUIREMENTS IMPOSED AS A FUNCTION OF A POLITICAL SUBDIVISION'S OBLIGATION TO PROTECT THE HEALTH, WELFARE AND SAFETY OF THE PUBLIC, SUCH AS TRAFFIC MANAGEMENT, EXCAVATION AND REPAIR STANDARDS, AND OTHER SIMILAR REQUIREMENTS IMPOSED CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

(D) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY (INCLUDING, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF A LOCAL CHARTER OR ADMINISTRATIVE CODE, ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE), TOWN, VILLAGE OR ANY DEPARTMENT, BOARD, BUREAU, OR AGENCY THEREOF, OR ANY PUBLIC AUTHORITY PROVIDED FOR IN THE PUBLIC AUTHORITIES LAW, OR ANY OTHER LAW.

(E) "PUBLIC RIGHTS-OF-WAY" MEANS THE SURFACE AND THE AREA ACROSS, IN, OVER, ALONG, UPON AND BELOW THE SURFACE OF THE PUBLIC STREETS, ROADS, BRIDGES, SIDEWALKS, LANES, COURTS, WAYS, ALLEYS, AND BOULEVARDS OF A POLITICAL SUBDIVISION, INCLUDING, PUBLIC UTILITY EASEMENTS AND PUBLIC LANDS AND WATERWAYS USED AS PUBLIC THOROUGHFARES, AS THE SAME NOW OR MAY HEREAFTER EXIST, AND WHICH ARE SUBJECT TO THE SUPERVISION, JURISDICTION OR CONTROL OF THAT POLITICAL SUBDIVISION.

(F) "TELECOMMUNICATIONS FACILITIES" OR "FACILITIES" MEANS THE EQUIPMENT OR PERSONAL PROPERTY OF A TELECOMMUNICATIONS SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO, COPPER AND FIBER CABLES, LINES, WIRES, SWITCHES, CONDUITS, PIPES, POLES, SHEATHS, CABINETS, VAULTS AND MANHOLES, WHICH ARE CAPABLE OF, OR ARE USED TO, GENERATE, RECEIVE, TRANSMIT, CARRY, AMPLIFY, OR PROVIDE TELECOMMUNICATIONS SERVICES OR SIGNALS.

(G) "SERVICES" MEANS ANY SERVICES THAT A TELECOMMUNICATIONS SERVICE PROVIDER IS AUTHORIZED TO PROVIDE BY THE STATE PUBLIC SERVICE COMMISSION OR THE FEDERAL COMMUNICATIONS COMMISSION, PURSUANT TO ANY STATE OR FEDERAL LAW OR BY ANY OTHER APPROPRIATE STATE OR FEDERAL REGULATORY AUTHORITY HAVING JURISDICTION OVER A TELECOMMUNICATION SERVICE PROVIDER'S ACTIVITIES.

(H) "TELECOMMUNICATIONS SERVICE PROVIDER" MEANS A PERSON, FIRM, CORPORATION, COMPANY, PARTNERSHIP OR ANY OTHER BUSINESS ENTITY WHICH PROVIDES INTERSTATE, INTRASTATE, OR INTERNATIONAL COMMUNICATIONS SERVICES OR DEPLOYS FACILITIES USED FOR THE PROVISION OF SERVICES AND FOR PURPOSES OF THIS ARTICLE, AND INCLUDES A PERSON WHO USES ANY TELECOMMUNICATIONS FACILITIES LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY.

(I) "USE" OR "USE OF THE PUBLIC RIGHTS-OF-WAY" MEANS THE ACT OF IMPOSING A PHYSICAL BURDEN UPON THE PUBLIC RIGHTS-OF-WAY THROUGH THE INSTALLATION AND MAINTENANCE OF A FACILITY WITHIN SUCH RIGHTS-OF-WAY. USE OF

THE PUBLIC RIGHTS-OF-WAY SHALL NOT INCLUDE THE LEASING OF FIBER, FIBER CAPACITY, CONDUIT, INNERDUCT, ATTACHING TO UTILITY POLES OWNED BY ANOTHER PERSON, OR THE PURCHASE OF SERVICES FROM A TELECOMMUNICATIONS SERVICE PROVIDER FOR RESALE TO ANOTHER PARTY.

S 991-C. APPLICABILITY. (A) THIS ARTICLE SHALL APPLY TO ALL TELECOMMUNICATIONS SERVICE PROVIDERS AND OTHER PERSONS THAT OWN TELECOMMUNICATIONS FACILITIES USED IN THE PUBLIC RIGHTS-OF-WAY AND SHALL BE APPLIED TO ALL PERSONS AND TELECOMMUNICATIONS SERVICE PROVIDERS IN A NON-DISCRIMINATORY AND COMPETITIVELY NEUTRAL MANNER.

(B) THIS ARTICLE SHALL NOT APPLY TO ANY PERSON WHO:

(I) LEASES TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY;

(II) LEASES POLE SPACE, CONDUIT OR INNERDUCT FOR THE PLACEMENT OF ITS OWN CABLE OR FIBER;

(III) PROVIDES SERVICES BY RESELLING SERVICES OR PURCHASES UNBUNDLED NETWORK ELEMENTS;

(IV) PROCURES CAPACITY OR FACILITIES FOR A SPECIFIED PERIOD OF TIME; OR

(V) OTHERWISE PROVIDES SERVICE BUT DOES NOT OTHERWISE USE THE PUBLIC RIGHTS-OF-WAY.

S 991-D. RIGHTS-OF-WAY PERMIT. (A) ANY PERSON SEEKING USE OF THE PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES OR FACILITIES SHALL APPLY FOR A PERMIT AUTHORIZING SUCH ACCESS AND USE WITHIN THE POLITICAL SUBDIVISION. ONCE GRANTED, SUCH PERMIT SHALL AUTHORIZE THE PERSON TO HAVE ACCESS TO, AND USE OF THE PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF CONSTRUCTING, OPERATING AND MAINTAINING FACILITIES WITHIN THE BOUNDARIES OF THE POLITICAL SUBDIVISION. HOWEVER, NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE A POLITICAL SUBDIVISION FROM REQUIRING AND ISSUING CONSTRUCTION PERMITS AS PROVIDED FOR IN SECTION NINE HUNDRED NINETY-ONE-F OF THIS ARTICLE.

(B) ANY AUTHORIZATIONS, PERMITS, CONSENTS, OR OTHER ARRANGEMENT GRANTED, PERMITTED OR AUTHORIZED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE BY WHICH THE POLITICAL SUBDIVISION HAS AUTHORIZED A TELECOMMUNICATIONS SERVICE PROVIDER TO USE THE PUBLIC RIGHTS-OF-WAY SHALL SATISFY THE REQUIREMENTS TO USE THE PUBLIC RIGHTS-OF-WAY UNDER THIS ARTICLE AS LONG AS, AND TO THE EXTENT THAT SUCH USE IS CONSISTENT WITH THIS ARTICLE. ANY TELECOMMUNICATIONS SERVICE PROVIDER ASSERTING RIGHTS TO USE THE PUBLIC RIGHTS-OF-WAY UNDER FRANCHISES, ORDINANCES OR OTHER AUTHORIZATIONS UNDER STATE LAW, AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE, SHALL BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE NOTWITHSTANDING SUCH PRIOR AUTHORIZATIONS OR APPROVALS.

(C) A POLITICAL SUBDIVISION MAY REQUIRE A TELECOMMUNICATIONS SERVICE PROVIDER THAT PLACES OR SEEKS TO PLACE FACILITIES IN THE PUBLIC RIGHTS-OF-WAY WITHIN ITS JURISDICTION OR CONTROL TO REGISTER WITH THE POLITICAL SUBDIVISION PROVIDED THAT, IN DOING SO, THE INFORMATION REQUIRED TO BE PROVIDED IN SUCH REGISTRATION SHALL BE LIMITED TO THE NAME, ADDRESS, AND TELEPHONE NUMBER OF A CONTACT PERSON OF THE TELECOMMUNICATIONS SERVICE PROVIDER, TOGETHER WITH A PERFORMANCE BOND OR OTHER PROOF OF INSURANCE OR SELF-INSURING STATUS IN AN AMOUNT WHICH, IN THE REASONABLE ESTIMATE OF THE POLITICAL SUBDIVISION, IS ADEQUATE TO DEFEND AND COVER CLAIMS IN ACTIONS OR PROCEEDINGS WHICH MAY ARISE OUT OF SUCH TELECOMMUNICATIONS SERVICE PROVIDER'S ACTIVITIES OR BUSINESS WITHIN THE POLITICAL SUBDIVISION.

(D) THE POLITICAL SUBDIVISION SHALL, UPON RECEIPT OF THE APPLICATION REFERRED TO IN THIS SECTION, EITHER GRANT OR DENY THE TELECOMMUNICATIONS SERVICE PROVIDER'S PERMIT FOR ACCESS TO, AND THE OUTGOING USE OF, THE PUBLIC RIGHTS-OF-WAY, EASEMENTS OR PUBLIC PLACES LOCATED WITHIN ITS

JURISDICTION WITHIN THIRTY DAYS FROM THE DATE SUCH APPLICATION IS FILED. A TELECOMMUNICATIONS SERVICE PROVIDER'S APPLICATION, AND SUBSEQUENT RIGHT TO ACCESS AND USE THE PUBLIC RIGHTS-OF-WAY PURSUANT TO SUCH PERMIT SHALL NOT BE UNREASONABLY WITHHELD OR DENIED. ANY DENIAL SHALL CONTAIN WRITTEN DETAILED FINDINGS EXPLAINING THE REASONS FOR THE DENIAL. IF THE POLITICAL SUBDIVISION FAILS TO GRANT OR DENY AN APPLICATION FOR A PERMIT UNDER THIS PROVISION WITHIN SUCH THIRTY-DAY PERIOD THE APPLICATION AND PERMIT SHALL BE DEEMED GRANTED.

(E) ANY CONDITIONS IMPOSED BY THE POLITICAL SUBDIVISION PURSUANT TO A PERMIT GRANTED UNDER THIS SECTION SHALL BE STRICTLY PROHIBITED IF THE SAME SHALL CONSTITUTE A BARRIER TO ENTRY AND SHALL ONLY BE LIMITED TO MATTERS THAT RELATE TO THE TIME, PLACE, AND MANNER OF ENTRY INTO THE PUBLIC RIGHTS-OF-WAY. NO FURTHER CONDITIONS SHALL BE IMPOSED AT ANY TIME AFTER THE PERMIT IS GRANTED.

S 991-E. RESTRICTIONS ON THE ABILITY OF POLITICAL SUBDIVISIONS TO FURTHER REGULATE THE ACTIVITIES OF TELECOMMUNICATIONS SERVICE PROVIDERS. (A) NO POLITICAL SUBDIVISION SHALL ENACT, MAINTAIN, OR ENFORCE ANY LOCAL LAW OR OTHER LEGAL REQUIREMENTS APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS THAT IS INCONSISTENT WITH THIS ARTICLE, AND ANY SUCH LOCAL LAW OR OTHER LEGAL REQUIREMENT SHALL BE DEEMED VOID AS AGAINST PUBLIC POLICY.

(B) THE POLITICAL SUBDIVISION MAY REVIEW AND APPROVE ONLY APPLICATIONS FOR CONSTRUCTION OF FACILITIES IN PUBLIC RIGHTS-OF-WAY, AS PROVIDED IN SECTION NINE HUNDRED NINETY-ONE-F OF THIS ARTICLE, BUT ONLY TO THE EXTENT PERMITTED BY THIS ARTICLE.

(C) THE POLITICAL SUBDIVISION MAY RECOVER FROM A TELECOMMUNICATIONS SERVICE PROVIDER, ON A NON-DISCRIMINATORY AND COMPETITIVELY NEUTRAL BASIS, THE ACTUAL COSTS INCURRED BY THE POLITICAL SUBDIVISION RESULTING FROM THE TELECOMMUNICATIONS SERVICE PROVIDER'S USE OF THE PUBLIC RIGHTS-OF-WAY.

(D) NO POLITICAL SUBDIVISION SHALL:

(I) REQUIRE ANY TELECOMMUNICATIONS SERVICE PROVIDER TO ENTER INTO AGREEMENTS, FRANCHISES, LICENSES, OR ANY OTHER CONTRACTUAL OBLIGATIONS THAT PURPORT TO GRANT THE POLITICAL SUBDIVISION ANY GREATER OR MORE ENCOMPASSING AUTHORITY OTHER THAN THAT WHICH IS CONTAINED IN THIS ARTICLE;

(II) REQUIRE OR ACCEPT ANY FEES OR ANY OTHER FORM OF COMPENSATION FROM A TELECOMMUNICATIONS SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO FRANCHISES FEES, GROSS REVENUE FEES, RENT CHARGES, PER LINEAR FOOT CHARGES, ACCESS LINE CHARGES, FREE CONDUIT, FIBER OR SERVICES FOR ANY OTHER FEE OF A SIMILAR OR COMPARABLE NATURE;

(III) REGULATE SERVICES, RATES OR TERMS AND CONDITIONS OF ANY TELECOMMUNICATIONS SERVICE PROVIDER'S PROVISION OF SERVICES;

(IV) REQUIRE ANY TELECOMMUNICATIONS SERVICE PROVIDER TO FILE OR PROVIDE ANY FINANCIAL, TECHNICAL OR MANAGERIAL INFORMATION OTHER THAN AS IS REQUIRED BY THIS ARTICLE;

(V) REQUIRE CONSENT FOR ASSIGNMENT OR CHANGE IN CONTROL OF THE ASSETS, STOCK OR PERMITS OF A TELECOMMUNICATIONS SERVICE PROVIDER;

(VI) REQUIRE A TELECOMMUNICATIONS SERVICE PROVIDER TO WAIVE ANY LEGAL RIGHTS, OR REQUIRE SUCH ENTITY TO ACKNOWLEDGE THE PURPORTED AUTHORITY OF A POLITICAL SUBDIVISION BEYOND THE SCOPE OF THIS ARTICLE IN EXCHANGE FOR A PERMIT OR APPROVAL TO CONSTRUCT FACILITIES. ANY WAIVER OF SUCH RIGHTS SHALL BE VOID AGAINST PUBLIC POLICY AND ANY TELECOMMUNICATIONS SERVICE PROVIDER'S AGREEMENT TO, OR NEGOTIATION OF ANY DOCUMENT CONTAINING SUCH A WAIVER, SHALL BE NULL AND VOID;

(VII) ENTER INTO ANY EXCLUSIVE AGREEMENT WITH ANY TELECOMMUNICATIONS SERVICE PROVIDER AS TO THE USE OF A PUBLIC RIGHT-OF-WAY;

(VIII) PROHIBIT A TELECOMMUNICATIONS SERVICE PROVIDER FROM PASSING THROUGH TO ITS CUSTOMERS IN ITS RATE SETTING PROCEDURES, ANY FEES REQUIRED TO BE PAID TO A POLITICAL SUBDIVISION UNDER THIS ARTICLE UNLESS OTHERWISE RESTRICTED FROM DOING SO PURSUANT TO STATE LAW;

(IX) TAKE ANY ACTION THAT CREATES A BARRIER TO ENTRY TO THE PROVISION OF SERVICES BY THE TELECOMMUNICATIONS SERVICE PROVIDER; OR

(X) IMPOSE ANY OBLIGATIONS ON A TELECOMMUNICATIONS SERVICE PROVIDER, WHICH ARE NOT APPLICABLE TO ALL OTHER TELECOMMUNICATIONS SERVICE PROVIDERS.

S 991-F. APPLICATION FOR CONSTRUCTION PERMITS. (A) ANY TELECOMMUNICATIONS SERVICE PROVIDER, WHICH SEEKS TO CONSTRUCT FACILITIES WITHIN A POLITICAL SUBDIVISION, SHALL FILE AN APPLICATION FOR A CONSTRUCTION PERMIT AND PAY AN APPLICATION FEE NOT TO EXCEED FIFTY DOLLARS TO THE POLITICAL SUBDIVISION WHERE SUCH FACILITY IS TO BE LOCATED. SUCH FEE SHALL COVER ALL THE COSTS RELATING TO THE REVIEW AND ISSUANCE OF THE CONSTRUCTION PERMIT, AND NO OTHER FEE OF ANY KIND SHALL BE IMPOSED. SUCH APPLICATION FOR A CONSTRUCTION PERMIT UNDER THIS SECTION SHALL INCLUDE SCHEMATIC DRAWINGS SHOWING THE LOCATION OF THE TELECOMMUNICATIONS SERVICE PROVIDER'S PROPOSED FACILITIES, AND FOR APPLICATIONS AND CONSTRUCTION PERMITS ISSUED AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE POLITICAL SUBDIVISION SHALL PRESCRIBE THE STANDARDIZED FORM AND SIMPLIFIED APPLICATION PROCESS TO BE USED BY AN APPLICANT. THE INFORMATION REQUIRED TO BE SUBMITTED BY A TELECOMMUNICATIONS SERVICE PROVIDER FOR A PERMIT UNDER THIS SECTION SHALL BE SIMILAR IN NATURE TO THE INFORMATION GENERALLY REQUIRED TO BE SUBMITTED BY ANY OTHER PERSON SEEKING A PERMIT TO CONSTRUCT WITHIN THE POLITICAL SUBDIVISION. THE POLITICAL SUBDIVISION SHALL MAKE A DETERMINATION AND, ISSUE OR REFUSE TO ISSUE, CONSTRUCTION PERMITS WITHIN TEN DAYS OF RECEIPT OF THE COMPLETED APPLICATION. IF SUCH APPLICATION IS NOT APPROVED OR DISAPPROVED WITHIN SUCH TEN-DAY PERIOD, SUCH APPLICATION SHALL BE DEEMED APPROVED.

(B) WHERE THE CONSTRUCTION PERMIT IS FOR FACILITIES TO BE LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY, THE POLITICAL SUBDIVISION MAY REQUIRE A TELECOMMUNICATIONS SERVICE PROVIDER TO SUBMIT SCHEMATIC DRAWINGS SHOWING THE PURPORTED LOCATION OF SUCH FACILITIES. THE POLITICAL SUBDIVISION MAY REQUIRE THE SCHEMATIC TO BE IN PAPER OR ELECTRONIC FORMAT, PROVIDED THE FORMAT IS MAINTAINED IN THE ORDINARY COURSE OF BUSINESS BY THE TELECOMMUNICATIONS SERVICE PROVIDER. IN THE EVENT THE SCHEMATIC PROVIDED DOES NOT REASONABLY REFLECT THE ACTUAL INSTALLATION OF FACILITIES, THE POLITICAL SUBDIVISION MAY REQUIRE THE TELECOMMUNICATIONS SERVICE PROVIDER TO SUBMIT A REVISED SCHEMATIC REFLECTING ANY CHANGES. ANY SCHEMATIC DRAWING OR OTHER INFORMATION SUBMITTED TO THE POLITICAL SUBDIVISION SHALL BE TREATED AS CONFIDENTIAL AND PROPRIETARY BY THE POLITICAL SUBDIVISION AND SHALL BE SUBJECT TO PUBLIC DISCLOSURE ONLY TO THE EXTENT ALLOWED BY STATE LAW. IF REQUIRED TO DISCLOSE ANY INFORMATION BY STATE LAW, PRIOR TO DISCLOSING SUCH INFORMATION, THE POLITICAL SUBDIVISION SHALL GIVE ENOUGH PRIOR NOTICE TO THE TELECOMMUNICATIONS SERVICE PROVIDER TO ENABLE IT TO PROTECT THE CONFIDENTIALITY OF ANY INFORMATION NOT REQUIRED TO BE DISCLOSED.

(C) ANY CONDITIONS CONTAINED IN A PERMIT GRANTED UNDER THIS SECTION SHALL BE LIMITED TO MATTERS DIRECTLY AFFECTING THE TELECOMMUNICATIONS SERVICE PROVIDER'S ACCESS, USAGE AND PHYSICAL OCCUPATION OF THE PUBLIC RIGHTS-OF-WAY.

(D) THE POLITICAL SUBDIVISION MAY REGULATE THE TIME, PLACE AND MANNER FOR ENTRY INTO A PUBLIC RIGHT-OF-WAY BY A TELECOMMUNICATIONS SERVICE

PROVIDER FOR CONSTRUCTION OF FACILITIES AND MAY REASONABLY MANAGE THE CONSTRUCTION OF FACILITIES IN THE PUBLIC RIGHTS-OF-WAY TO MINIMIZE THE DISTURBANCE TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

S 991-G. RESTORATION. IN ANY CASE WHERE A TELECOMMUNICATIONS SERVICE PROVIDER HAS CONSTRUCTED FACILITIES UPON A PUBLIC RIGHT-OF-WAY, IT SHALL BE RESPONSIBLE AT ITS OWN COST FOR RESTORING THE PORTION OF THE PUBLIC RIGHT-OF-WAY SURFACE IMPACTED BY ITS CONSTRUCTION ACTIVITIES TO ITS PRE-CONSTRUCTION CONDITION. WHERE TWO OR MORE TELECOMMUNICATIONS SERVICE PROVIDERS AND/OR OTHER PERSONS, INCLUDING, BUT NOT LIMITED TO, OTHER PUBLIC UTILITIES AND POLITICAL SUBDIVISIONS, PERFORM CONSTRUCTION ACTIVITIES IN THE SAME PORTION OF THE PUBLIC RIGHTS-OF-WAY, EACH TELECOMMUNICATIONS SERVICE PROVIDER AND PERSON SHALL BE RESPONSIBLE FOR THEIR PROPORTIONATE COST OF RESTORING SUCH PUBLIC RIGHTS-OF-WAY.

S 991-H. JUDICIAL REVIEW. IN ANY CASE WHERE A POLITICAL SUBDIVISION HAS DENIED A TELECOMMUNICATIONS SERVICE PROVIDER'S APPLICATION FOR A PERMIT AS PROVIDED FOR IN SECTION NINE HUNDRED NINETY-ONE-D OF THIS ARTICLE, OR WHERE THE POLITICAL SUBDIVISION HAS GRANTED SUCH APPLICATION, BUT HAS IMPOSED BARRIERS TO ENTRY OR OTHER CONDITIONS UPON THE TELECOMMUNICATIONS SERVICE PROVIDER WHICH SUCH APPLICANT BELIEVES TO BE UNLAWFUL OR ILLEGAL, THE TELECOMMUNICATIONS SERVICE PROVIDER MAY APPLY TO THE POLITICAL SUBDIVISION TO MODIFY THE TERMS AND CONDITIONS, OR WHERE SUCH RELIEF IS NOT GRANTED, MAY BRING AN ACTION IN STATE COURT FOR INJUNCTIVE, DECLARATORY, OR OTHER APPROPRIATE JUDICIAL RELIEF. IN AN ACTION BY A TELECOMMUNICATIONS SERVICE PROVIDER AGAINST A POLITICAL SUBDIVISION COMMENCED PURSUANT TO THE AUTHORITY OF THIS SECTION WHERE THE COURT DETERMINES THAT THE ACTIONS OF THE POLITICAL SUBDIVISION WERE IN FACT UNLAWFUL, ILLEGAL OR IN CONTRAVENTION OF LAW, THE COURT SHALL MAKE AN AWARD TO THE PREVAILING PARTY REIMBURSING IT FOR THE AMOUNT OF ITS COSTS AND REASONABLE ATTORNEY'S FEES IN PROSECUTING THE SAME.

S 991-I. RELOCATION OF FACILITIES. A POLITICAL SUBDIVISION MAY REQUIRE A TELECOMMUNICATIONS SERVICE PROVIDER TO MOVE, ALTER, CHANGE, ADAPT, OR CONFORM ITS FACILITIES IN THE EVENT SUCH ACTION IS NECESSARY, REASONABLE AND WARRANTED FOR REASONS PERTAINING TO THE HEALTH, WELFARE AND SAFETY OF ITS CITIZENS. THE POLITICAL SUBDIVISION SHALL BE RESPONSIBLE FOR ALL COSTS INCURRED IN MOVING, ALTERING, CHANGING, ADAPTING, OR CONFORMING THE FACILITIES OF THE TELECOMMUNICATIONS SERVICE PROVIDER IF SUCH MOVE IS FOR AESTHETIC PURPOSES, FOR THE BENEFIT OF A THIRD PARTY, FOR THE BENEFIT OF THE POLITICAL SUBDIVISION, OR WHICH IS NECESSITATED FOR THE DEVELOPMENT OF A NON-ROADWAY STRUCTURE. IN THE EVENT THAT THE POLITICAL SUBDIVISION REQUIRES A TELECOMMUNICATIONS SERVICE PROVIDER TO RELOCATE ITS ABOVE GROUND FACILITIES TO UNDERGROUND, THE POLITICAL SUBDIVISION SHALL REIMBURSE SUCH PROVIDER FOR THE COSTS INCURRED IN SO RELOCATING SUCH FACILITIES. A TELECOMMUNICATIONS SERVICE PROVIDER SHALL ONLY BE REQUIRED TO RELOCATE FACILITIES UNDERGROUND TO THE EXTENT THAT: (I) IT IS TECHNICALLY FEASIBLE AND PRACTICAL; (II) THE POLITICAL SUBDIVISION REIMBURSES THE TELECOMMUNICATIONS SERVICE PROVIDER FOR RELOCATING THE FACILITY UNDERGROUND; AND (III) AT THE REQUEST OF THE TELECOMMUNICATIONS SERVICE PROVIDER, SUCH COSTS ARE PAID PRIOR TO SUCH RELOCATION.

S 991-J. INDEMNIFICATION. THE POLITICAL SUBDIVISION AND TELECOMMUNICATIONS SERVICE PROVIDER SHALL INDEMNIFY AND SAVE EACH OTHER HARMLESS FROM ANY LIABILITIES, CLAIMS OR DEMANDS (INCLUDING THE COSTS, EXPENSES AND REASONABLE ATTORNEY'S FEES ON ACCOUNT THEREOF) THAT MAY BE MADE BY ANYONE FOR PERSONAL INJURIES, INCLUDING DEATH, OR DAMAGE TO TANGIBLE PROPERTY, RESULTING FROM THE NEGLIGENCE AND/OR WILLFUL MISCONDUCT OF THE OTHER PARTY, ITS EMPLOYEES OR AGENTS IN ITS PERFORMANCE OF DUTIES AND OBLIGATIONS UNDER THIS ARTICLE. THE POLITICAL SUBDIVISION AND THE TELE-

COMMUNICATIONS SERVICE PROVIDER SHALL DEFEND THE OTHER AT THE OTHER'S REQUEST AGAINST ANY SUCH LIABILITY, CLAIM OR DEMAND AND SHALL NOTIFY THE OTHER PROMPTLY OF WRITTEN CLAIMS OR DEMANDS AGAINST ANY SUCH PARTY WHERE THE OTHER PARTY MAY BE RESPONSIBLE HEREUNDER.

S 991-K. INSURANCE. EACH TELECOMMUNICATIONS SERVICE PROVIDER, AT ITS SOLE COST AND EXPENSE, SHALL SECURE AND KEEP IN FORCE DURING CONSTRUCTION OF FACILITIES UPON A PUBLIC RIGHT-OF-WAY, THE FOLLOWING INSURANCE COVERAGE PURSUANT TO A CONTRACT OR POLICY OF INSURANCE ISSUED BY AN INSURER LICENSED TO DO BUSINESS IN THIS STATE WITH AT LEAST THE FOLLOWING RESPECTIVE MINIMUM LIMITS:

(A) WORKERS' COMPENSATION - THE STATUTORILY PRESCRIBED LIMITS, UNLESS THE TELECOMMUNICATIONS SERVICE PROVIDER MAINTAINS A QUALIFIED SELF-INSURED STATUS AND SO CERTIFIES SUCH STATUS TO THE POLITICAL SUBDIVISION.

(B) EMPLOYER'S LIABILITY - FIVE HUNDRED THOUSAND DOLLARS PER OCCURRENCE.

(C) COMPREHENSIVE GENERAL LIABILITY INSURANCE -- COMBINED BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY - ONE MILLION DOLLARS PER OCCURRENCE.

(D) AUTOMOBILE LIABILITY INSURANCE -- BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY - ONE MILLION DOLLARS PER OCCURRENCE. SUCH POLICY SHALL INSURE ALL OWNED, NON-OWNED AND HIRED VEHICLES THAT ARE, OR MAY BE USED, BY THE TELECOMMUNICATIONS SERVICE PROVIDER AND ITS EMPLOYEES IN ITS PERFORMANCE OF DUTIES AND RESPONSIBILITIES UNDER THIS ARTICLE. THE ABOVE LIMITS OF LIABILITY MAY BE PROVIDED BY A COMBINATION OF PRIMARY AND EXCESS POLICIES, AT THE ELECTION OF THE TELECOMMUNICATIONS SERVICE PROVIDER.

(E) EACH INSURANCE POLICY PROVIDED BY OR ON BEHALF OF A TELECOMMUNICATIONS SERVICE PROVIDER PURSUANT TO THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, SHALL INCLUDE THE POLITICAL SUBDIVISION AS AN ADDITIONAL NAMED INSURED AND SHALL PROVIDE THAT THIRTY DAYS ADVANCE WRITTEN NOTICE BY REGISTERED MAIL OF ANY CANCELLATION, EXPIRATION, MODIFICATION OR REDUCTION IN AMOUNT OR SCOPE OF COVERAGE SHALL BE PROVIDED BY THE TELECOMMUNICATIONS SERVICE PROVIDER TO THE POLITICAL SUBDIVISION.

S 991-L. BONDS. (A) PRIOR TO COMMENCING ANY CONSTRUCTION UPON A PUBLIC RIGHT-OF-WAY BY A TELECOMMUNICATIONS SERVICE PROVIDER, THE POLITICAL SUBDIVISION MAY REQUIRE THE POSTING OF A PERFORMANCE BOND IN AN AMOUNT NOT TO EXCEED THE REASONABLE COSTS TO RETURN THE PUBLIC RIGHTS-OF-WAY TO ITS ORIGINAL CONDITION, NORMAL WEAR AND TEAR EXCEPTED, AND TO ENSURE THE TELECOMMUNICATIONS SERVICE PROVIDER'S COMPLIANCE WITH THIS ARTICLE. SUCH BONDING REQUIREMENT SHALL BE IMPOSED IN A NON-DISCRIMINATORY AND COMPETITIVELY NEUTRAL MANNER AND SHALL TERMINATE THIRTY DAYS AFTER COMPLETION OF RESTORATION OF THE PUBLIC RIGHTS-OF-WAY TO ITS ORIGINAL CONDITION.

(B) IN THE EVENT A TELECOMMUNICATIONS SERVICE PROVIDER FAILS TO COMPLETE CONSTRUCTION OF FACILITIES IN A SAFE, TIMELY, AND COMPETENT MANNER, THERE SHALL BE RECOVERABLE, JOINTLY AND SEVERALLY FROM THE PRINCIPAL AND SURETY AT THE BOND, ANY ACTUAL LOSS SUFFERED BY THE POLITICAL SUBDIVISION AS A RESULT OF SUCH FAILURE. THE FINDING THAT SUCH WORK WAS DONE IN SUCH A SATISFACTORY MANNER SHALL BE AS JOINTLY DETERMINED BY THE POLITICAL SUBDIVISION AND THE TELECOMMUNICATIONS SERVICE PROVIDER. IF THERE IS A DISPUTE OVER A TELECOMMUNICATIONS SERVICE PROVIDER'S SATISFACTORY RESTORATION OF THE PUBLIC RIGHTS-OF-WAY, A TELECOMMUNICATIONS SERVICE PROVIDER SHALL HAVE THE RIGHT TO SEEK TERMINATION OF THE BOND UNDER SECTION NINE HUNDRED NINETY-ONE-H OF THIS ARTICLE. IN THE EVENT A TELECOMMUNICATIONS SERVICE PROVIDER FAILS TO COMPLETE REQUIRED RESTORATION OF THE PUBLIC RIGHTS-OF-WAY ARISING FROM ITS CONSTRUCTION OF FACILITIES, THE POLITICAL SUBDIVISION MAY RECOVER, JOINTLY AND SEVERALLY FROM

THE PRINCIPAL AND SURETY AT THE BOND, ANY ACTUAL LOSS SUFFERED OF SUCH FAILURE.

S 991-M. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNCONSTITUTIONAL AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

S 2. This act shall take effect immediately.