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REC. FEB. 27, 2017

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# WEXFORD COUNTY ROAD COMMISSION

*OUR MISSION IS TO IMPROVE AND MAINTAIN A SAFE AND EFFICIENT ROAD SYSTEM*

February 27, 2017

**Re: Placement of Wireless Network Facilities Within Highway Right-of-Ways Under the Jurisdiction of the Wexford County Road Commission**

Dear Township Official:

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 Wexford 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. 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. 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.

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

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

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.

The Road Commission's first priority is the safety of those who use public highways in Wexford 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 Karl Hanson, Wexford County Highway Engineer, at the following addresses:

Surface Mail:           Karl Hanson  
                              Wexford County Road Commission  
                              85 W M-115  
                              Boon, MI 49618

Email:                    engineer@wexfordcrc.org

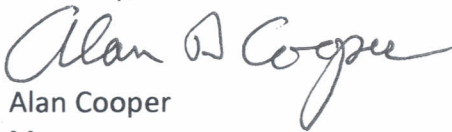
Fax:                       (2310 775-9732

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,

A handwritten signature in cursive script that reads "Alan D. Cooper". The signature is written in dark ink and is positioned above the printed name and title.

Alan Cooper  
Manager