

Executive Summary of SB 379:

Standardized Local Telephone Application Rules

Status

Signed by the Governor.

Effective Date

July 1, 2008

This new legislation amends Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and telegraph service, so as to preempt and replace the local franchising process, creating a standardized approval process for municipal authorities to review and adopt application information that telephone companies are required to provide. The amended statute also creates a standard form of “due compensation” based on three percent of recurring local revenues. The bill ensures that municipalities maintain the authority to manage the rights of way and requires telecommunications companies to abide by reasonable rights of way ordinances.

Existing franchise agreements will remain in effect until their expiration or until December 31, 2012, whichever is sooner.

The major points of the revised Code section provide essentially as follows:

Sec. 46-5-1 Legislative Summary

- Clarifies that local approval is necessary for any telegraph or telephone company chartered by the laws of this or any other state to construct, maintain, and operate its lines and facilities upon, under, along, and over the public roads and highways and rights of way of this state.
- Limits the approval of municipal authorities to the franchising process set forth in (b) of this Code section,
- Limits the approval of county authorities to the permitting process set forth in subsection (c) of this Code section.

Sec. 46-5-1(b) Municipal Franchising Authority

- Establishes a uniform application process for any telegraph or telephone company that places or seeks to place lines and facilities in the public roads and highways or rights of way of a municipal authority.
- Provides for an application **review period of 15 business days** for a municipal authority to notify the company if the application is incomplete
- Specifies that the failure of a municipal authority to adopt an application within **60 calendar days** of the receipt of a completed application shall constitute final adoption of such application.

- Allows the municipal authority to adopt a completed application by adoption of a resolution or ordinance or by notification to the telegraph or telephone company.
- Requires any telegraph or telephone company that has placed lines and facilities in the public roads and highways or rights of way of a municipal authority without first obtaining permits or otherwise notifying the appropriate municipal authority of its presence in the public roads and highways or rights of way shall provide the information required by paragraph (1) of this subsection, if applicable, to such municipal authority **on or before October 1, 2008**.
- Establishes due compensation as an amount equal to no more than 3 percent of actual recurring local service revenues received by such company from its retail, end user customers located within the boundaries of a municipal authority. “Actual recurring local service revenues” means those revenues customarily included in the Uniform System of Accounts as prescribed by the Federal Communications Commission for Class 'A' and 'B' companies
- In the event any telegraph or telephone company is paying an existing occupational license tax or fee, based on actual recurring local services revenues, as of January 1, 2008, such payment shall be considered the payment of due compensation without further action on the part of the municipal authority. **In the event that the rate of such existing tax or fee exceeds 3 percent of actual recurring local service revenues, that rate shall remain effective until December 31, 2012;** thereafter, the payment by such telegraph or telephone company at the rate of 3 percent shall be considered the payment of due compensation without further action on the part of the municipal authority.
- Any franchise fee or occupational tax shall be in lieu of any other permit fee, encroachment fee, degradation fee, disruption fee, business license tax, occupational license tax, occupational license fee, or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92 et seq. or any other provision of law regardless of nomenclature.
- Each municipal authority may, no more than once annually, audit the business records of a telegraph or telephone company to the extent necessary to ensure payment in accordance with this Code section. Records provided by the company during such audit are exempt from public inspection under Code Section 50-18-70. It shall be the duty of such telegraph or telephone company to mark all such documents as exempt from Code Section 50-18-70, et seq., and the telegraph or telephone company shall defend, indemnify, and hold harmless any municipal authority and any municipal officer or employee in any request for, or in any action seeking, access to such records.
- Nothing in this Code section shall affect the authority of a municipal authority to require telegraph or telephone companies accessing the public roads and highways and rights of way of a municipal authority to obtain permits and otherwise comply with the reasonable regulations established pursuant to paragraph (10) of subsection (a) of Code Section 32-4-92.

- If a telegraph or telephone company begins providing service after January 1, 2008, and such telegraph or telephone company does not have retail, end user customers located within the boundaries of a municipal authority, the payment by such company at rates in accordance with the rates set by regulations promulgated by the Department of Transportation to a municipal authority for the use of its rights of way shall be considered the payment of due compensation.

Sec. 46-5-1(c) County Permitting Authority

- If a telegraph or telephone company accesses the public roads and highways and rights of way of a county and such county requires such telegraph or telephone company to pay due compensation, such due compensation shall be limited to an administrative cost recoupment fee which shall not exceed such county's direct, actual costs incurred in its permitting process, including issuing and processing permits, plan reviews, physical inspection and direct administrative costs; and such costs shall be demonstrable and shall be equitable among applicable users of such county's roads and highways or rights of way.
- Permit fees shall not include the costs of highway or rights of way acquisition or any general administrative, management, or maintenance costs of the roads and highways or rights of way and shall not be imposed for any activity that does not require the physical disturbance of such public roads and highways or rights of way or does not impair access to or full use of such public roads and highways or rights of way.
- Nothing in this Code section shall affect the authority of a county to require a telegraph or telephone company to comply with reasonable regulations for construction of telephone lines and facilities in public highways or rights of way pursuant to the provisions of paragraph (6) of Code Section 32-4-42.