

# RIGHTS AND DUTIES OF TELECOMMUNICATION COMPANIES USING TOWNSHIP ROAD RIGHT-OF-WAY

The increased number of cell phone towers, with related fiber optic cable, has generated questions and conflicts when telecommunication companies seek to use township road right-of-way for laying of fiber optic cable to service cell phone towers. Disputes may arise over the depth at which cable is buried; the location of connection boxes that may project above grade level, and the repair of excavated or bored road surfaces and roadside right of way. Illinois law authorizes companies to use right-of-way in some circumstances, and places time limits on the approval (or disapproval) of highway commissioners and county engineers who have a recognized but limited right to control how the right-of-way is used.

The Illinois Telephone Company Act authorizes companies to place cable in highway right-of-way. The statute imposes certain requirements on companies that seek to lay lines along township roads, and also requires that commissioners address any proposal from a company to construct any such line.

The company must provide the commissioner with written plans and specifications, and documentation of the purpose and intention to construct cable in the right-of-way. The notice must be served on the commissioner at least 10 days before the line is placed (30 days for new construction.) The commissioner may specify the portion of the highway upon which the line may be placed, and in the event the commissioner gives that specification, the company must construct its line in accordance with such specification. If the commissioner does not provide specifications, the company may place its line as long as it does not interfere with other proper uses of the highway.

The Road and Bridges Act calls for written consent of the commissioner or the county engineer if a public utility wishes to place cable in a right-of-way. The utility should provide the commissioner with plans and specifications, and a petition asking for consent at least 30 days before beginning. Of particular note is that if the commissioner does not act within that 30 day period after the petition for consent is presented to him, the company may bypass the commissioner and make written application directly to the county engineer for consent.

If a commissioner is unsure whether to accept the company's plans and specifications he should confer with his county engineer. The county engineer will have the say-so if the commissioner fails to act, and as a practical matter the county engineer will likely decide the adequacy of the plans and specifications.

The Road and Bridges Act places the primary responsibility for repairs to roads caused by a utility on the utility. The commissioner is authorized to give written notice to the utility of the need to make repairs within 30 days after receipt of the notice, and in the event the company fails to do so, the commissioner can repair the damage and bill the utility.

While the Courts recognize a commissioner may exercise regulatory powers over the use of the highway, the regulatory power is subject to a reasonableness limitation; the commissioner does not have unlimited power. Consent cannot be unreasonably withheld or refused for an improper reason.

The Federal Communications Act regulates telecommunication companies. This law is intended to reduce regulation and encourage the rapid development of new telecommunications technologies. The Federal Courts have limited the role of local government, noting that allowing each township to set its own regulation will discourage and delay development of telecommunications. The U. S. Supreme Court has said the federal laws effectively prohibit local regulation that impedes telecommunication service.

A highway commissioner faced with the decision whether to consent to the placement of fiber optic cable within a township road right-of-way should discuss concerns with the county engineer if the engineering and related technical issues are complicated or the sufficiency of the protective measures called for by the plans and specifications are uncertain or believed to be inadequate. It is likely that any refusal to communicate with a telecommunication company seeking consent will lead to the company, if 30 days elapse, bypassing the commissioner and going directly to the county engineer. Litigation of any kind over these types of issues is undesirable because both state and federal law make a successful suit for the telecommunications carrier the most likely end result; a successful suit for a township requires proper engineering support through the county or a contract engineer.

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