

**METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT
(EXCERPT)
Act 48 of 2002**

484.3108 Maintenance fee.

Sec. 8.

(1) Except as otherwise provided by this act, a provider shall pay to the authority an annual maintenance fee as required under this act.

(2) The authority shall determine for each provider the amount of fees required under this section. April 1 to March 31 shall be the annual period covered by each assessment and April 29 the date due for payment. The authority shall prescribe the schedule for the allocation and disbursement of the fees under this act. The authority shall disburse the annual maintenance fee to each municipality as provided under sections 10, 11, and 12 on or before the last day of the month following the month of receipt of the fees by the authority. The authority may authorize the department of treasury to collect and make the allocations and disbursements of fees required under this act. Any interest accrued on the revenue collected under this act shall be used only as provided by this act.

(3) Except as otherwise provided under subsection (6), for the period of November 1, 2002 to March 31, 2003, a provider shall pay an initial annual maintenance fee to the authority on April 29, 2003 of 2 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area, prorated for the period specified in this subsection.

(4) Except as otherwise provided under subsection (6), for each year after the initial period provided for under subsection (3), a provider shall pay the authority an annual maintenance fee of 5 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area.

(5) The fee required under this section is based on the linear feet occupied by the provider regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider.

(6) In recognition of the need to provide nondiscriminatory compensation to municipalities for management of their rights-of-way, the fees required under this section shall be the lesser of the amounts prescribed under subsections (3) and (4) or 1 of the following:

(a) For a provider that was an incumbent local exchange carrier in this state on January 1, 2002, the fees within the exchange in which that provider was providing basic local exchange service on January 1, 2002, when restated by the authority on a per access line per year basis, shall not exceed the statewide per access line per year fee of the provider with the highest number of access lines in this state. The authority shall annually determine the statewide per access line per year fee by dividing the amount of the total annual fees the provider is required to pay under subsections (3) and (4) by the provider's total number of access lines in this state.

(b) For all other providers in an exchange, the fee per linear foot for the provider's facilities located in the public rights-of-way in that exchange shall be the same as that of the incumbent local exchange carrier.

(7) If the provider with the highest number of access lines in this state is unable to provide the exact number of linear feet for a determination under subsection (6), the provider shall no later than February 1, 2003 make a good faith estimate, in consultation with the staff of the authority, of the number of linear feet of rights-of-way in which facilities owned by the provider are located in a metropolitan area and pay an annual maintenance fee to the authority based upon the estimate.

(8) If an estimate of the linear feet is made under subsection (7), the statewide per access line per year cost shall be determined by the authority based on that provider's good faith estimate. Upon the true up of the estimated linear feet under subsection (9), the authority shall adjust the fees of all providers affected by subsection (6).

(9) Within 360 days of the effective date of this act, a provider making an estimate under subsection (8) shall true up the estimated amount of linear feet of the provider's facilities in rights-of-way in a metropolitan area to the actual amount of linear feet of rights-of-way in a metropolitan area owned by the provider. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located exceeds the estimated amount, the provider shall pay the authority the difference within 30 days of the true up. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located is less than the estimated amount, the provider shall receive a corresponding credit from the authority against the annual maintenance fee due for payment in the succeeding year.

(10) The authority may prescribe the forms, standards, methodology, and procedures for assessing fees under this act. Each provider and municipality shall provide reasonably requested information regarding public rights-of-way that is required to assist the authority in computing and issuing the assessments under this section.

(11) Notwithstanding any other provision of this act, a provider possessing a franchise or operating with the consent of a municipality to provide and that is providing cable services within a metropolitan area is subject to an annual maintenance fee of 1 cent per linear foot of public right-of-way occupied by the provider's facilities within

the metropolitan area. An affiliate of such a provider shall not pay any additional fees to occupy or use the same facilities in public rights-of-way as initially constructed for and used by a cable provider. The fee required under this subsection is in lieu of any other maintenance fee or other fee except for fees paid by the provider under a cable franchise or consent agreement. A cable franchise or consent agreement from a municipality that allows the municipality to seek right-of-way related information comparable to that required by a permit under this act and that provides insurance for right-of-way related activities shall satisfy any requirement for the holder of the cable franchise or consent agreement or its affiliates to obtain a permit to provide information services or telecommunications services in the municipality.

(12) The cable provider may satisfy the fee requirement under subsection (11) by certifying to the authority that the provider's aggregate investment in this state, since January 1, 1996, in facilities capable of providing broadband internet transport access service exceeds the aggregate amount of the maintenance fees assessed under subsection (11).

(13) The fees collected under this act shall be used only as provided by this act and shall be subject to an audit by the state auditor general.

(14) A provider may apply to the commission for a determination of the maximum amount of credit available under section 13b(5) of 1905 PA 282, MCL 207.13b. Each application shall include sufficient documentation to permit the commission to accurately determine the allowable credit. Except as otherwise provided under subsection (15), the commission shall issue its determination within 45 days from the date of the application. Upon certification by the commission of the documentation provided in subdivisions (a) and (b), a provider shall qualify for a credit equal to the costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b, and shall not be subject to subsection (16) if the provider files the following documentation under this subsection:

(a) Verification of the costs paid by the provider under this act.

(b) Verification that the provider's rates and charges for basic local exchange service, including revenues from intrastate subscriber line or end-user line charges, do not exceed the commission's approved rates and charges for those services.

(15) If the commission finds that it cannot make a determination based on the documentation required under subsection (14), it may require the provider to file its application under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(16) The maximum credit allowed under subsection (14) or (15) shall be the lesser of the following:

(a) The costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b.

(b) The amount that the costs paid under this act, together with the provider's total service long run incremental cost of basic local exchange service, exceeds the provider's rates for basic local exchange service plus any additional charges of the provider used to recover its total service long run incremental cost for basic local exchange service. "Total service long run incremental cost" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(17) The tax credit allowed under subsections (14) and (15) shall be the sole method of recovery for the costs required under this act. A provider shall not recover the costs required under this act through rates and charges to the end-users for telecommunication services.

(18) An educational institution is not required to pay the fees and charges or fulfill the mapping requirements required under this act for facilities that are constructed and used as provided under applicable provisions of section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307. To the extent that an educational institution provides services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, the educational institution shall obtain a permit, pay the fees and charges, and fulfill the mapping requirement required under this act for each linear foot of public right-of-way used in providing telecommunication services to residential or commercial customers. An educational institution shall notify the commission if it provides telecommunication services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, to a residential or commercial customer for compensation.

(19) An electric or gas utility, or an affiliate of a utility, or an electric transmission provider is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for electric or gas utility services including internal utility communications and customer services such as billing or load management. The electric or gas utility, or an affiliate of a utility, or an electric transmission provider shall only obtain a permit, pay the fees and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the utility, or its affiliate, for compensation. An electric or gas utility, or an affiliate of a utility, or an electric transmission provider shall notify the commission if the electric or gas utility, or an affiliate of a utility, or an electric transmission provider provides or leases telecommunication services to a person other than the utility or its affiliate for compensation. For the purposes of this subsection, electric and gas utility services include billing and metering services performed for an alternative electric supplier, an alternative gas

supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(20) A state, county, municipality, municipally owned utility, or an affiliate is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for state, county, municipality, or governmental entity, or utility services including internal state, county, municipality, governmental entity, or utility communications and customer services such as billing or load management. The state, county, municipality, municipally owned utility, or an affiliate shall only obtain a permit, pay the fees and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. A state, county, municipality, municipally owned utility, or an affiliate shall notify the commission if the state, county, municipality, municipally owned utility, or an affiliate provides or leases telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. For the purposes of this subsection, utility services include billing and metering services performed for an alternative electric supplier, an alternative gas supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(21) The authority may grant to a provider a waiver of the fee requirement of this section for telecommunication facilities located in underserved areas as identified by the authority if 2/3 of the affected municipalities approve the granting of a waiver. If a waiver is granted under this subsection, the amount of the waived fees shall be deducted from the fee revenue the affected municipalities would otherwise be entitled under sections 11 and 12. A waiver granted under this subsection shall not be for more than 10 years. As used in this subsection, "underserved area" means that term as defined under section 7 of the Michigan broadband development authority act.

History: 2002, Act 48, Eff. Nov. 1, 2002