

**STAFF MEETING MINUTES  
LANCASTER COUNTY BOARD OF COMMISSIONERS  
COUNTY-CITY BUILDING  
ROOM 113  
TUESDAY, MAY 25, 1999  
2:30 P.M.**

Commissioners Present: Kathy Campbell, Chair  
Bob Workman  
Bernie Heier  
Larry Hudkins  
Linda Steinman

Others Present: Kerry Eagan, Chief Administrative Officer  
Diane Staab, Deputy County Attorney  
Steve Huggenberger, Assistant City Attorney  
Jennifer Dam, Planning Department  
Vince Mejer, Purchasing Agent  
Larry Worrell, County Surveyor  
Doug Ahlberg, Emergency Management Director  
Ann Taylor, County Clerk's Office

**AGENDA ITEM**

**1 DISCUSSION WITH RIVER OAKS COMMUNICATIONS CORPORATION  
REGARDING DEVELOPMENT OF A MODEL TELECOMMUNICATIONS AND  
PERSONAL WIRELESS SERVICES ORDINANCE - Tom Duchen,  
Telecommunications Consultant**

Tom Duchen, Telecommunications Consultant, stated that work is proceeding on development of the following ordinances for the City and County:

- \* A Personal Wireless Ordinance, which will address the location of antennas and cellular towers
- \* A Model Telecommunications Ordinance, which will address right-of-way management, franchise licenses and permits, fee recovery issues, construction standards and public health, safety and welfare standards

Duchen presented a brief overview of Exhibit A, which covers the following topics:

- \* Personal Wireless Services
- \* Some Current Industry Providers
- \* Federal Legislation
- \* Role of Local Governments
- \* Opportunities and Challenges
- \* Some Jurisdictions Instituted Moratoria
- \* Personal Wireless Service Facilities Ordinance

- \* Leasing of Property and Facilities for Personal Communications System (PCS) and Wireless
- \* Master/Model Telecommunications Ordinance
- \* Purpose of the Model Telecommunications Ordinance
- \* Model Telecommunications Ordinance Overview
- \* Broad Concerns of the Franchising Authority
- \* Some Projected New Services of Cable Providers
- \* Telecommunications Act of 1996
- \* Some Technological Components, Shaping Network Development
- \* Public Institutional Networks (I-NETS)

Duchen noted that personal communications systems (PCS) require placement of an antenna every ½ mile compared to 1 to 1½ mile placement of towers for cellular systems. Providers will seek placement of these antennas and towers following a grid system, although investigation of the availability of alternative sites could be required by the governing body. He cautioned that rejection of any request for placement of an antenna or tower must be supported by evidence documented in the written record that zoning code and regulations were not followed.

In response to a question from Steinman, Duchon stated the Personal Wireless Ordinance will encourage co-location of other providers. Cellular towers under 100 feet in height must be engineered to provide for one additional provider, while those over 100 feet in height must provide for two additional providers. Space at the base of the tower must also be provided.

Preference of siting of antennas or cellular towers on public property was briefly discussed, with Duchon noting that positive factors include collection of revenue and percentage of sublease payments, provision of space for governmental functions, ability to enforce architectural and aesthetic issues and enforcement authority in the event of abandonment.

Technical interference issues were also discussed, with amendment of the draft ordinance to require all PCS providers to provide certification and sufficient proof that their facility does not produce technical interference, or an engineering study could be ordered.

Kerry Eagan, Chief Administrative Officer, also recommended inclusion of a hold harmless clause requiring correction, at the provider's expense, if interference is detected.

Duchen indicated that he will amend the Personal Wireless Ordinance to change "structure-mounted wireless" and "building-mounted wireless" to "structure-mounted antenna" and "building-mounted antenna" in the Type of Permit Required Section, and create a separate category in that section for building-mounted towers.

The Board concurred with that change.

Duchen reviewed *City of Lincoln and Lancaster County, Personal Wireless Facilities* (Exhibit B), noting that input is still needed from the County Board and City Council with regards to the following policy decisions:

1. What type of aesthetic and screening requirements are necessary or desirable?
2. What type of setbacks should be imposed from adjoining property owners and public thoroughfares?
3. To what extent should providers be required to check for alternative sites on existing buildings and facilities and within what radius? What mapping and tower separation requirements are necessary or desirable?
4. What types of color are permissible from a blending standpoint, and do the City and County want to allow lights, signals and signs on towers?
5. Do the City and County have a preference for monopoles versus lattice towers?
6. With respect to rooftops, what type of coverage should be permissible on the roofs themselves; what type of screening and parapets may be required or allowed?
7. Do the City and County want to create incentives for co-location? Do the City and County prefer to have a fewer number of towers which are taller or a larger number of towers with less height?
8. Do the City and County want a system of preferences guiding the siting of wireless facilities?
9. Do the City and County want incentives established for siting of wireless facilities? What incentives can the City and County offer in terms of permitted uses or expedited review?
10. Do the City and County want to encourage or create a preference for locating on City and County property by providing incentives in the regulatory process for such expedited review?
11. Are there historical, scenic or environmentally sensitive areas which require further consideration and scrutiny?
12. What type of permitted height should be permissible in differing zones?
13. Should all towers and antennas require such public hearings or should some antennae be permitted with other permits or administrative review without public hearings?
14. What type of process should be instituted where there is abandonment of facilities, or in the event that the effective radiated power is reduced, or if smaller towers would suffice as technology continues to improve?
15. What type of sanctions (civil, criminal, revocation of authorizations or a combination thereof) should be provided in the ordinance?

Duchen also reviewed *City of Lincoln and Lancaster County, Model Telecommunications Ordinance* (Exhibit C). He stated this ordinance will be impacted by LB 496, which changes right-of-way for telecommunications lines and related facilities and eminent domain powers, noting ambiguous language included in the bill clouds cost recovery and licensing of franchises issues.

Duchen stated policy decisions include whether to apply this ordinance to other providers, such as electric, water and natural gas companies, and how to address excess capacity, open video system, private communication system and telecommunication reseller issues.

Duchen also submitted a handout detailing *Personal Wireless Services and Facilities* (Exhibit D).

Campbell suggested that the County Board hold a joint public hearing with the City Council on issues related to the proposed ordinances.

Duchen suggested the Board review the submitted materials and make comment. He noted that he plans to meet with Kerry Eagan, Chief Administrative Officer; Diane Staab, Deputy County Attorney; and Jennifer Dam, Planning Department, on June 7<sup>th</sup> to further refine the draft ordinances.

Duchen noted that once the governing bodies have approved the drafts, they will then be shared with wireline and wireless providers and input will be solicited.

Campbell suggested that the County Board hold a joint public hearing with the City Council on issues related to the proposed ordinances.

The Board requested scheduling of a slide presentation of existing antennas and cellular towers in the City and County by Jennifer Dam, Planning Department, on the agenda for the Thursday, June 3<sup>rd</sup> County Board Staff Meeting.

By direction of the Chair, the meeting was adjourned.

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Bruce Medcalf  
Lancaster County Clerk

**CITY OF LINCOLN AND LANCASTER COUNTY**

**TELECOMMUNICATIONS MEETINGS**

**MAY 24-26, 1999**

**RIVER OAKS COMMUNICATIONS CORPORATION**

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## VIII. OVERVIEW OF MTO

## **PERSONAL WIRELESS SERVICES**

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### **I. PCS v. Cellular**

**A. Voice and Data**

**B. Towers, Antennae, Ancillary Buildings and Equipment**

**C. Multiple Sites**

### **II. Emerging Technology - PCS**

**A. Ultimate Success - Unknown**

**B. Use Has Grown Dramatically in Past Two Years**

## **SOME CURRENT INDUSTRY PROVIDERS**

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### **I. FCC Auction**

#### **A. A - F Spectrum**

### **II. Some of the Major Telephone and Cable TV Companies**

#### **A. Aliant**

#### **B. Time Warner**

#### **C. US West**

#### **D. Ameritech**

#### **E. Sprint Spectrum L.P.**

#### **F. PCS Primeco**

#### **G. AT&T Wireless PCS**

### **III. Very Expensive to Participate**

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## **FEDERAL LEGISLATION**

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- I. Telecommunications Act of 1996**
  
- II. Preservation of Local Authority**
  
- III. Cannot Prohibit Wireless Services**
  
- IV. Decisions**
  - A. Must be in Writing**
  
  - B. Must be Supported by Substantial Evidence if Denial**
  
- V. Appeal**
  - A. Judicial**
  
  - B. FCC - RF Emissions**

## **ROLE OF LOCAL GOVERNMENTS**

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- **Management of Public Rights-of-Way**
- **Placement of Facilities**
- **Right to Receive Fair and Reasonable Compensation**
- **Procurement of Telecommunications Services**
- **Competition Instead of Subsidization**
- **Be an Advocate at the Local, State and Federal Levels**

## **OPPORTUNITIES AND CHALLENGES**

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- **Economic Development**
- **Effectively Manage Rights-of-Way ("ROW"), Receive Compensation for Use of ROW, Sites/Facilities, In-Kind Equipment, Fiber Optic Lines**
- **Enhancement of Telecommunications Infrastructure**
- **Increase Operational Efficiencies**
- **Governmental Benefits**
- **Educational Benefits**
  - **Schools**
  - **Libraries**
- **Public/Private Projects**
- **Need to Stay Informed - Some Examples**
  - **Federal - FCC Proceedings**
  - **State Legislation**

- **Participate in Process**

## **SOME JURISDICTIONS INSTITUTED MORATORIA**

- I. **Medina, Washington - 6 Months**
  - A. **Issuance of Permits v. Processing of Applications**
  
- II. **Risk of Litigation**
  
- III. **Interim Step**
  
- IV. **Vested Rights Issues Under State Law**
  
- V. **FCC - Public Forum**

# **PERSONAL WIRELESS SERVICE**

## **FACILITIES ORDINANCE**

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### **SOME OF THE HIGHLIGHTS**

- I. Comply with the Telecommunications Act of 1996**
- II. Protect the Public Interest**
- III. Placement, Construction and Modification of Wireless Facilities**
- IV. Existing Zoning Classifications**
  - A. Permitted Outright v. Special Exception**
- V. Provide Specific Regulations**
- VI. Definitions Section (Broad Definitions Regarding Antennae, Structures, Towers, Etc.)**
- VII. Policy Statement - Encourage Co-location (If It Furthers Policy Objectives)**
- VIII. Site Selection**
  - A. Public Property**
  - B. Private Property**
  - C. Zoning Districts Within the City and County**

# PERSONAL WIRELESS SERVICE

## FACILITIES ORDINANCE

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### SOME OF THE HIGHLIGHTS

#### IX. Design Criteria

- A. Architectural Compatibility
- B. Setbacks
- C. Color
- D. Structure - Tower v. Antennae
- E. Landscaping
- F. Fencing
- G. Signal Interference
- H. Rural versus More Suburban or Downtown Locations

#### X. Abandonment

- A. Letter of Credit v. Bond

# **PERSONAL WIRELESS SERVICE**

## **FACILITIES ORDINANCE**

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### **SOME OF THE HIGHLIGHTS**

#### **XI. Application Requirements**

- A. Site Plan**
- B. Map**
- C. Parcel Description**
- D. Separation Distance**
- E. Landscape Plan**
- F. Compliance with Federal, State and Local Laws**

#### **XII. Third Party Review**

#### **XIII. Remedies**

#### **XIV. Severability**

# **LEASING OF PROPERTY AND FACILITIES FOR PCS AND WIRELESS**

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- I. **Public v. Private Property Issues**
  
- II. **Most Common Sites - Public Property**
  - A. **Existing Police, Fire and Sheriff Radio Towers**
  - B. **Water Towers**
  - C. **Existing Buildings and Structures**
  - D. **Construct New Tower/Monopole or Lattice**
  
- III. **Most Common Sites - Private Property**
  - A. **Existing Buildings and Structures**
  - B. **Existing Towers**
  - C. **Church Steeples**
  - D. **"Tower Farms"**
  - E. **Farm Fields**
  - F. **Adjacent to a Business**

# LEASING OF PROPERTY AND FACILITIES

## FOR PCS AND WIRELESS

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### IV. Revenues Generated

- A. Public Property - \$500 - \$2,000/Month  
(\$1,000 - \$1,200 per Month Average)
- B. Private Property
  - 1. Zoning Matter
  - 2. Private Property Owner Receives What the Market Will Bear (Church received up front payment of \$2,000/month for 10 year contract or approximately \$240,000 to place antenna in the cross on church)

### V. Litigation

- A. Roseville, Minnesota
  - 1. Gross Revenues v. Flat Fee
  - 2. FCC Action
- B. North Barrington, Illinois
  - 1. Aesthetic Issues
  - 2. Property Value Issues

# **MASTER/MODEL TELECOMMUNICATIONS ORDINANCE (MTO)**

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## **I. Review Need for Overall Telecommunications Policy:**

- **Update/Project "ROW" Management Requirements; Strive for Uniformity**
- **Update/Project Zoning Requirements; Review Treatment of Functionally Equivalent Services**
- **Develop Comprehensive Broadband Communications Ordinance with Cable and Telecommunications Services Sections**
- **Review Fee Mechanisms, Ensure Cost Recovery and Look at Capabilities Regarding Other ROW Use and Compensation, Including In-Kind Services**

## **II. Advocate at the Federal Level**

## **III. Advocate at the State Level**

## **PURPOSE OF THE MTO**

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- **Protect Public Interest**
- **Comply with The Telecommunications Act of 1996**
- **Comply with Nebraska State Law**
- **Effectively Manage Rights-of-Way**
- **Enforcement/Cost Recovery**
- **Establish Clear Regulatory Framework**
- **Promote Competition**
- **Encourage Advanced Services**

## **MTO OVERVIEW**

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### **I. Purpose**

- **Establish Local Policy**
- **Create Clear Local Guidelines**

### **II. Registration**

- **All Telecommunications Carriers/Providers**

### **III. Nonexclusive License Criteria**

- **Covers Facilities in the City Serving Customers Outside City (Pass Through)**
- **Application**
- **Location of Facilities**
- **Permits Required**
- **Compensation**

### **IV. Nonexclusive Franchise Criteria**

- **Covers Facilities in the City or County Serving Customers in City or County**
- **Application**

- **Location of Facilities**

## **MTO OVERVIEW**

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### **IV. Nonexclusive Franchise Criteria (Continued)**

- **Permits Required**
- **Compensation**
- **Nondiscriminatory Treatment**
- **Impact of State Legislation**

### **V. Cable Television**

- **This Section Needs to Take Into Account Existing Franchise Agreements/Ordinances and the Existing Cable Television Renewal Process in the City**

### **VI. Fees**

- **Percentages in Any New Legislation**
- **Direct and Indirect Costs**
- **Application and Review Fees**
- **Other City or County Expenses**
- **Annual Determination**
- **Permit Fees**
- **Regulatory Fees Not a Tax**

- **Impact of Any New State Law**

## **MTO OVERVIEW**

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### **VII. Construction Provisions**

- **Location**
- **Permits Required; Application, Engineer's Certification, Traffic Control Plan, Schedule**
- **Notice**
- **Repair and Emergency Work**
- **Maintenance**
- **Coordinated Construction Activity**
- **As-Built Maps**

### **VIII. Examples of Some Other Matters in MTO**

- **Leased Capacity**
- **Insurance**
- **Indemnification**
- **Surety/Security Fund/Bonds**
- **Assignments/Transfers**

**THIS IS A GENERAL OVERVIEW AND NOT AN ALL INCLUSIVE**

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**LIST**

## **BROAD CONCERNS OF THE FRANCHISING AUTHORITY**

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- **Current and Future Community Needs and Interests**
- **Public, Educational and Governmental (PEG) Access Service**
- **Public Institutional Networks (I-Nets)**
- **Infrastructure Development**
- **Right-of-Way Management**
- **Building and Electrical Codes**
- **Zoning Requirements**
- **Facilities Management**



## **SOME PROJECTED NEW SERVICES OF CABLE PROVIDERS**

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- **CATV Wireline Telephony**
  
  - **CATV/Microcellular Personal Communications Service (PCS)**
  
  - **Data Communications Services**
    - **Internet Access**
  
    - **Other Peer-to-Peer Communications**
  
  - **Compressed Interactive Video**
    - **Per Program, Video On Demand**
  
    - **Videophone**
  
  - **Targeted Services for Businesses**
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# TELECOMMUNICATIONS ACT OF 1996

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## KEY ELEMENTS

- **Local Exchange Telephone Competition**
  - LECs
  - IXCs
  - CAPs
  - CATV
  
- **Long Distance Telephone Competition**
  - See Above
  
- **Video/Information Services Competition**
  - See Above
  - QVS
  - DBS
  - Wireless Cable

- **Universal Service**

# **SOME TECHNOLOGICAL COMPONENTS**

## **SHAPING NETWORK DEVELOPMENT**

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- **Fiber Optics**
- **Digital Transmission**
- **Video Compression**
- **Switching Systems**
- **Interactivity**
- **Advanced Functions**

## **PUBLIC INSTITUTIONAL NETWORKS (I-NETS)**

- **I-Nets Are Internal, Typically Wide Area, Communications Networks Linking Primarily Governmental and Educational Facilities**
  
- **Types of I-Nets**
  - **Separate, Dedicated Network**
  
  - **Fiber Pairs - Dark or Lit Fiber**
    - **Fiber Ring Backbone**
    - **HFC/Coaxial Cable**
    - **Mid Split Frequency Alignment**
    - **Subscriber Network Crossovers**
  
  - **Subset, Integrated Network**
    - **Portion of Subscriber Network**
    - **Addressable Portion of Video Spectrum**
    - **Portion of Separate Business Network**
    - **Portion of Broadband Ethernet**

- **Mixture of Network Types**

# CITY OF LINCOLN AND LANCASTER COUNTY

## PERSONAL WIRELESS FACILITIES

### IMPLEMENTATION APPROACH

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- Continue to act in a manner which does not unreasonably discriminate among providers of functionally equivalent services.
- Continue the review of existing local provisions and regulations in the zoning codes and related materials which affect personal wireless services. Supplement, where necessary, current setback, height, rooftop location and equipment screening requirements.
- Evaluate timeframes currently utilized to review requests for authorizations to place, construct or modify personal wireless service facilities. Such reviews must be completed within a reasonable period of time after the request is filed, taking into account the nature and scope of the request.
- Further address a number of specific considerations concerning aesthetics and the deployment of towers, antennas, powering equipment and other facilities and equipment.
- Review existing agreements and permits between the City, County and providers to identify areas and substantive provisions which could be included in overall personal wireless services and facilities ordinances. Beneficial provisions, for example, could include current or augmented requirements related to compensation, technical and siting specifications, indemnification and other provisions.
- Implement a wireless service provider registration requirement, and inventory existing towers and antennas to determine whether zoning compliance exists and whether all applicable permits and leases have been obtained from personal wireless service providers in the City and

County.

## **IMPLEMENTATION APPROACH (Continued)**

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- Develop and enact an overall personal wireless service facilities ordinance reflecting the results of the above review activities. This ordinance should address a variety of issues, including site selection criteria, preferences for public property, co-location requirements, permit and inspection requirements and non-use/ abandonment provisions. Such an ordinance also should indicate that any decision to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

## **PERSONAL WIRELESS SERVICES OVERVIEW**

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The Federal Telecommunications Act of 1996 ("the Act") provides the overall framework for local regulation of personal wireless services. Specifically, Section 704 - Facilities Siting; Radio Frequency Emission Standards states:

a) National Wireless Telecommunications Siting Policy

*Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:*

*"(7) Preservation of Local Zoning Authority -*

*"(A) General Authority*

*Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modifications of personal wireless service facilities.*

*"(B)" Limitations*

*"(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -*

*"(I) shall not unreasonably discriminate among providers of functionally equivalent services; and*

*"(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.*

*"(ii) a State or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such*

request.

*"(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.*

*"(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.*

*"(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.*

*The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.*

*"(C) Definitions - For purposes of this paragraph -*

*"(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;*

*"(ii) the term 'personal wireless service facility' means facilities for the provision of personal wireless services, and*

*"(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual license, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v))."*

## **PERSONAL WIRELESS POLICY DECISIONS**

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1. What type of aesthetic and screening requirements are necessary or desirable?
  - a. Use standard requirements already contained in underlying zoning regulation.
  - b. Require enhanced screening in residential zones.
  - c. Require enhanced screening in all zones.
  - d. Require enhanced screening in all zones, but provide flexibility to use existing vegetation or other non-prescribed method to screen.
  
2. What type of setbacks should be imposed from adjoining property owners and public thoroughfares?
  - a. Falling distance.
  - b. Standard setback for structures in underlying zone.
  - c. Standard setback for structures in underlying zone plus one foot for every foot of height above 60 feet.
  - d. Require towers to be located as close to the center of the property as possible.
  - e. Any of the above with flexibility to move the setback if underlying policy is better served.
  
3. To what extent should providers be required to check for alternative sites on existing buildings and facilities and within what radius? What mapping and tower separation requirements are necessary or desirable?
  - a. None; map existing facilities; map acceptable locations.

- b. One-quarter to one-half mile.
  - c. More or less than one-quarter to one-half mile.
  - d. Existing buildings; thirty to fifty feet or higher.
4. What types of color are permissible from a blending standpoint, and do the City and County want to allow lights, signals and signs on towers?
- a. Blend with architectural character and color.
  - b. Prohibit signs, signals and lights unless required by FAA, FCC, etc.
  - c. Apply to new or existing facilities?
5. Do the City and County have a preference for monopoles versus lattice towers?
- a. Aesthetics.
  - b. Color.
  - c. Located in what zones?
6. With respect to rooftops, what type of coverage should be permissible on the roofs themselves; what type of screening and parapets may be required or allowed?
- a. Preference to sidemounts over rooftops?
  - b. Rooftop locations as close to center as possible.
  - c. Rooftop locations anywhere provided they are screened.
  - d. Rooftop antennas of 15' to 19' in height or less (so long as they are screened) with no restrictions.

- e. What percentage of rooftop coverage would be acceptable?

7. Do the City and County want to create incentives for co-location? Do the City and County prefer to have a fewer number of towers which are taller or a larger number of towers with less height?

- a. Use of incentives or preferences to encourage or require co-location.
- b. Require space on towers be made available to future applicants.
- c. Require towers to be constructed to accommodate co-location.
- d. Require demonstration that inquiry was made for use of existing structures.
- e. No policy to encourage co-location.

8. Do the City and County want a system of preferences guiding the siting of wireless facilities?

- a. Create preferences to public property and other lesser impact locations.
- b. Create preferences to specific non-residential zones.
- c. Create preferences to stealth locations and other non-tower applications.
- d. Create preferences to co-location.
- e. Have no preferences in siting of facilities.
- f. Other?

9. Do the City and County want incentives established for siting of wireless facilities? What incentives can the City and County offer in terms of permitted uses or expedited review?

- a. Establish incentives for siting in non-residential zones.
- b. Establish incentives for establishing non-tower based facilities.
- c. Establish incentives for co-locating.
- d. Other?

10. Do the City and County want to encourage or create a preference for locating on City and County property by providing incentives in the regulatory process for such expedited review?

- a. Encourage use of public property through an expedited permitting process.
- b. Create preference for the use of public property over other siting choices.
- c. Encourage siting agreements for use of public property.
- d. Identify existing sites compatible for use for wireless facilities.
- e. Discourage use of public property for use by providers for siting facilities.

11. Are there historical, scenic or environmentally sensitive areas which require further consideration and scrutiny?

- a. Historic areas.
- b. Scenic areas.
- c. Environmentally sensitive areas.

- d. Setbacks and design flexibility.
- e. Preferences and alternatives to find alternative sites.

12. What type of permitted height should be permissible in differing zones?

- a. Based upon underlying zoning heights.
- b. Based upon the minimum required to make the system work.
- c. Based upon preferences and incentives.
- d. Allow towers of any height in all zones subject to special permit criteria or with other public hearings.

13. Should all towers and antennas require such public hearings or should some antennae be permitted with other permits or administrative review without public hearings?

- a. Permitted outright.
- b. Require special permit or similar review.
- c. Require administrative approval.
- d. Variance process.

14. What type of process should be instituted where there is abandonment of facilities, or in the event that the effective radiated power is reduced, or if smaller towers would suffice as technology continues to improve?

- a. None.
- b. Ninety (90) days.
- c. Six (6) months to one (1) year of non-use plus ninety (90) day removal.

15. What type of sanctions (civil, criminal, revocation of authorizations or a combination thereof) should be provided in the ordinance?

- a. Criminal.
- b. Civil infractions.
- c. Revocation.
- d. Combination.

# CITY OF LINCOLN AND LANCASTER COUNTY

## MODEL TELECOMMUNICATIONS ORDINANCE

### PURPOSE

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- Establish a local policy concerning telecommunications providers and services.
- Establish clear and nondiscriminatory local guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of telecommunications providers and services.
- Promote competition in telecommunications.
- Minimize unnecessary local regulation of telecommunications providers and services.
- Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City and County.
- Permit and manage reasonable access to the public rights-of-way of the City and County for telecommunications purposes on a competitively neutral basis.
- Conserve the limited physical capacity of the public rights-of-way held in public trust by the City and County.
- Assure that the City's and County's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs.
- Secure fair and reasonable compensation to the City and County and the residents of the City and County, in a non-discriminatory manner,

for permitting private use of the rights-of-way.

## **PURPOSE (Continued)**

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- Assure that all telecommunications carriers providing facilities or services within the City and County comply with the ordinances, rules and regulations of the City and County.
- Assure that the City and County can continue to fairly and responsibly protect the public health, safety and welfare.
- Enable the City and County to discharge their public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

## PERTINENT DEFINITIONS

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- **"Cable Operator"** means a Telecommunications Carrier providing or offering to provide "Cable Service" within the City and County as that term is defined in the Cable Acts.
- **"Communications System" or "Telecommunications System"** refers to a telecommunications system, cable system, or open video system.
- **"Excess Capacity"** means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the Right-of-Way that is or will be available for use for additional Telecommunications Facilities.
- **"Open Video System" or "OVS"** refers to a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of its rules, C.F.R., Part 76, as amended from time to time. An Open Video System is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service. Open Video System means those Telecommunications Facilities which are operated by a Person authorized to provide video services pursuant to Section 653 of the Communications Act of 1934, as amended, 47 U.S.C. § 573, and which operator is properly certificated to provide such services pursuant to applicable FCC regulations.
- **"Private Communications System"** means a facility placed in whole or in part in the Rights-of-Way for the provision of communications in connection with a Person's business, but not encompassing in any respect the provision of Telecommunications Services.

## **PERTINENT DEFINITIONS (Continued)**

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- **"Reseller"** refers to any Person who resells a Telecommunications Service, for which it makes a separate charge, provided over a Telecommunications System, where that Person does not own or lease the underlying Telecommunications System used for the transmission.
- **"Telecommunications Carrier"** includes every Person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City and County, used or to be used for the purpose of offering Telecommunications Service.
- **"Telecommunications Facilities"** means the plant, equipment and property within the City and County used to transmit, receive, distribute, provide or offer Telecommunications Service.
- **"Telecommunications Provider"** includes every Person who provides Telecommunications Service over Telecommunications Facilities.
- **"Telecommunications Service"** means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

## **MTO - SOME PERTINENT SECTIONS**

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### **I. Registration and Fees**

### **II. License and Fees**

### **III. Franchise and Fees**

- Telecommunications System
- Cable System
- Open Video System
- Not a Substitute for Permits

### **IV. Application to Existing Franchises and Agreements**

- Construction, Public Health, Safety and Welfare
- Transitional Provisions

### **V. Penalties**

### **VI. Registration**

- Registration Required
- Purpose of Registration
- Exception to Registration and Franchising

### **VII. License**

- License Application
- Determination by the City and County

- Term of Grant
- License Route
- Construction Permits
- Compensation to City and County

#### **VIII. Franchise**

- Franchise Application
- Term of Grant
- Compensation to City and County
- Service to the City and County
- Amendment of Grant
- Obligation to Cure As a Condition of Renewal

#### **IX. Cable Franchise**

- Franchise Required
- Length of Franchise
- Cable Franchise Characteristics

#### **X. Open Video System**

- Contents of Application for Initial or Renewed Franchise
- Franchise Characteristics

#### **XI. Conditions of Grant of License, Franchise, Cable Franchise or Open Video System Franchise**

- General Duties
- Interference with the Rights-of-Way
- Damage to Property
- Underground Services Alert
- Repair and Emergency Work
- Maintenance of Facilities
- Facility Subject to Inspection
- Relocation or Removal of Facilities
- Removal of Unauthorized Facilities
- Damage to Grantee's Facilities
- Restoration of Rights-of-Way
- Facilities Maps
- Duty to Provide Information
- Leased Capacity
- Grantee Insurance
- General Indemnification
- Performance and Financial Guarantees
- Security Fund
  - Up to \$50,000
  - Maintained for Completion of Services plus Three (3) Years



- Construction and Completion Bond
  - Remaining in Force After Substantial Completion of Work plus Five (5) Years
- Coordination of Construction Activities
  - Schedule for Five (5) Years
  - Possibility of Joint Excavation
- Assignments or Transfers of Grant

## **XII. Transactions Affecting Control**

- AT&T Example
- Adelphia Example

## **XIII. Revocation or Termination of Grant**

- Notice and Duty to Cure
- Hearing
- Standards for Revocation or Lesser Sanctions

## **XIV. Construction**

- Construction Standards
- Construction Codes
- Construction Permits
- Applications
- Engineer's Certification

- Construction Schedule
- As-Built Drawings
  - Hard Copies and Electronic Format
- Location of Facilities
  - Underground Duct or Conduit
  - Existing Poles
  - Subsequent Underground Construction
- Conduit Occupancy
  - Shared Occupancy
  - Excess Conduit Capacity
  - 24 Month Issue Regarding Right-of-Way
  - Excess Conduit
  - Lease of Conduit
- Joint Use
  - Trenches and Bores
- Occupancy of City and County Owned Conduit

#### **XV. Fees**

- Registration Fee
- Preapplication Conference and Application Fee
  - Amount



- Other City and County Costs
  - To the Extent Allowed by Law
  - Reimbursement
- Compensation for City and County Property
  - Amount
  - In-Kind Facilities or Equipment
- Construction Permit Fee
  - Actual Attributable Costs and Expenses
  - Electronic Map Conversion
  - Street Life Diminution
- Annual Fees

# PERSONAL WIRELESS SERVICES AND FACILITIES

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## SPECIFIC ISSUES

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- I. Purpose
- II. Which Document Controls - Ordinance or Lease?
- III. Definitions
  - Abandonment
  - Antenna
  - Antenna Height
  - Equipment Enclosure
  - Personal Wireless Service and Facilities
  - Screening
  - Tower
- IV. Exemptions
  - Numerous Regulatory Examples
- V. Policy Statement

## **VI. Existing Uses**

- **Routine Maintenance**
- **Registration**
- **Required Information**
- **Purpose**

## **VII. Industry Site Selection Process**

- **Some Items Considered by Industry Providers**

## **VIII. Site Selection Criteria**

- **FCC Licenses**
- **Minimize Effects on Property Values**
- **Screening without Signal Degradation**

## **IX. Priority of Locations**

- **Public Property**
- **Other Locations**
- **Criteria Before Locating in Residential Zones**



**X. Siting Priority on Public Property**

- **Non-Interference with Public Property**
- **Lease Type Requirements**
- **Parks Issues**

**XI. Required Submittals and Related Information**

- **Numerous Site, Elevation and Landscaping Plans, Maps and Documents**

**XII. Previously Filed Applications and New Applications**

**XIII. Co-Location**

- **As a Matter of Right**
- **As a Special Exception**
- **Reserving Space for Other Providers**

**XIV. No Signs or Banners**

**XV. Design Criteria**

- **Setback**
- **View Corridors**

- **Color**

**XV. Design Criteria (Continued)**

- **Lighting**
- **Equipment Structures Size, Locations and Screening**
- **Building Design**
- **Tower Safety and Removal**
- **Fencing**
- **Tower and Antenna Height**
- **Tower Separation - 1/4 - 1/2 Mile - Could Be More or Less**

**XVI. Antenna Criteria**

- **Architectural Compatibility**
- **Buildings Less than 30' in Height**
- **Roof Coverage and Screening**

**XVII. Type of Permit**

- **Building**
- **Special Exception**

- **Site Development**
- **ROW Use**

**XVII. Type of Permit (Continued)**

- **Administrative Review**
- **Wind Force**
- **Guy Wires**
- **Antennae on Electric, Phone and Light Poles**
- **Inspection Reports**

**XVIII. Non-Use/Abandonment**

- **Timeframes**
- **Criteria**
- **Dismantle and Removal**

**XIX. Third Party Review**

- **Interference Issues**
- **Public Safety**
- **Technical Aspects**

**XX. Remedies**