

The following is a survey of all 50 states and the District of Columbia on key rights-of-way laws. The matrix includes citations to relevant state statutes and provides a brief description of key statutory provisions relating to jurisdiction, compensation, timelines, nondiscrimination, mediation, remediation and maintenance concerning access to public rights-of-way. The information in this survey was compiled through original research by NTIA, with reliance on existing research by NARUC and NATOA. Special thanks to NTIA interns Anne Mitchell, Sara Meadows Tolleson, and Alan Dobson for creating this matrix.

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
Alabama	Ala. Code § 11-49-1 (2002): Requires consent from city or town authorities before using public lands for the construction or operation of any private utility or private enterprise.	Ala. Code § 11-50-B-3 (2002): Fair and reasonable compensation to municipalities for use of ROW is allowed.		Ala. Code § 11-50B-3 (2002): ROW usage fees must be assessed on a competitively neutral and nondiscriminatory basis.	On appeal, the right to condemn is to be determined by the court. <u>Nicrosi v. City of Montgomery</u> , 406 So. 2d (Ala. Civ. App. 1981).	Ala. Code § 11-50B-10 (2002): Public providers may exercise all powers of eminent domain as they are conferred on Alabama municipalities. However, no public provider may acquire any other person's or entity's cable system, telecommunications equipment, or telecommunications system, or any part or equipment of any other person's or entity's system, including, but not limited to, poles, wires, conduits, transmitters, receivers, towers, appliances, or rights-of-way, through the exercise of the power of eminent domain.	
	Ala. Code § 11-50-B-3 (2002): Government agencies at the state and local level have the authority to manage public rights-of-way, and to require fair and reasonable compensation from telecommunications providers for the use of such rights-of-way.	Ala. Code § 40-21-50 (2002): Telecommunications providers subject to 2.2% state gross receipts tax.					
	Ala. Code § 37-1-35 (2002): Reserves power of municipalities to maintain or require maintenance of their streets and other highways and public places. Statute protects any power of any municipality to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience, or to protect the public and also protect any right or power, by contract or otherwise, of any municipality to require utilities to pave and maintain the portions of highways used and occupied by them.	Ala. Code § 40-21-64 (2002): Counties prohibited from levying privilege/license tax.					
	Ala. Code § 10-5-14 (2002): This statute maintains the municipalities' power to regulate construction in public rights of way and to make ordinances accordingly.						

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	<p>Ala. Code § 11-43-62 (2002): County or municipal councils are in charge of regulating the use of streets for above-ground wire systems as they are used for telecommunications or electric utility purposes. A council may require that such systems be placed underground, if necessary, to ensure public convenience and safety. A council may sell or lease their franchise in any manner as it deems advisable, and the money raised is payable to the city treasury.</p>						
<p>Alaska</p>	<p>Alaska Stat. § 29.35.010 (2002): Municipalities granted the power to regulate rights of way.</p> <hr/> <p>Alaska Stat. § 38.05.810(e) (2002): The Director of the Mining, Land and Water Division may negotiate with licensed public utilities or common carriers for the lease, sale, or other disposal of state land. Such negotiations must have the approval of the commissioner, and may only be entered into if the utility or carrier reasonably requires the land to conduct its business.</p>	<p>Alaska Stat. § 42.05.251 (2002): Fee not to exceed actual cost to the municipality of the utility's use of the public way and of administering the permit program. Utilities may recover fee costs by applying them to customers' utility bills as a surcharge.</p>			<p>Alaska Stat. § 42.05.251 (2002): Disputes regarding fees, terms, conditions or exceptions imposed by municipalities mediated by the Commission.</p>	<p>Alaska Stat. § 42.05.631 (2002): "A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking."</p>	

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	<p>Alaska Stat. § 38.05.850 (2002): The Division of Mining, Land, and Water Director may issue permits, rights-of-way, or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or revocable, nonexclusive permits for the personal or commercial use or removal of resources that the director has determined to be of limited value. These permits may be issued without prior approval from the Commissioner of the Department of Natural Resources.</p>						

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<p>Arizona</p>	<p>Ariz. Rev. Stat. §§ 9-581 - 9-583; Ariz. Rev. Stat. § 9-583(A) (2001): A political subdivision (city, county, municipality, etc.) has the authority to manage its public highways and exercise its police powers, but may not exercise such power to prohibit the ability of any telecommunications company to provide its service.</p>	<p>Ariz. Rev. Stat. § 9-582(B) (2001): Any application or permit fees must be related to the costs incurred by processing the application, and must also be assessed within a reasonable amount of time after those costs are incurred.</p>		<p>Ariz. Rev. Stat. § 9-583(B) (2001): Licenses or franchises must be issued on a competitively-neutral basis, and within a reasonable time after application. The requirements for such licenses or permits are limited to: 1. Proof that the applicant has received a certificate of convenience and necessity from the AZ Corporation Commission; 2. Public highway use requirements; 3. Mapping requirements; 4. Insurance, performance bonds, or similar requirements; and 5. Enforcement and administrative provisions.</p>	<p>Ariz. Rev. Stat. § 9-582(A)(3) (2001): ... "Political subdivisions shall establish a nonbinding outside arbitration procedure to attempt to resolve disputes over recovery of reasonable, proportionate and attributable costs of construction permit fees pursuant to this paragraph and other fees pursuant to this article before the disputes are submitted to a court for resolution."</p>		
		<p>Ariz. Rev. Stat. § 9-582(D) (2001): Arizona permits a political subdivision and a telecommunications licensee or franchisee to agree to an in-kind arrangement, but the costs of the in-kind facilities offset the provider's obligation to pay local transaction privilege taxes or linear foot charges (applicable to interstate services) and must be equal to or less than the taxes or charges.</p>		<p>Ariz. Rev. Stat. § 9-581, para. 4. (2001): Cable companies are exempt from regulatory statutes relating to rights-of-way because they are excluded from the definition of "telecommunications." However, A.R.S. § 9-582 (G). "A municipality may not discriminate against a cable operator in its provision of telecommunications systems if that cable operator complies with the requirements applicable to telecommunications corporations."</p>			

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		<p>Ariz. Rev. Stat. § 9-582(D) (2001): "The in-kind facilities . . . shall remain in possession and ownership of the political subdivision after the term of the existing license or franchise expires."</p>		<p>Ariz. Rev. Stat. § 9-582 (A), (E) (2001): Any telecommunications company that was granted its franchise prior to November 1, 1997 is exempt from paying any additional fees.</p>			
		<p>Ariz. Rev. Stat. § 9-582(D) (2001): "... [A] political subdivision shall not require a telecommunications corporation to provide in-kind services, make in-kind payments or pay a fee in addition to the fees [authorized in the act] as a condition of consent to use a highway to provide telecommunications services."</p>					
		<p>Ariz. Rev. Stat. § 9-582(D) (2001): "Notwithstanding subsections A and B of this section, in a license or franchise, a political subdivision and a telecommunications corporation may agree to in-kind payments for use of the public highways different from those specified in subsection A or B of this section."</p>					

50-STATE SURVEY OF RIGHTS-OF-WAY STATUTES

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		<p>Ariz. Rev. Stat. § 9-582(E) (2001): "... The license or franchise shall be structured so that the in-kind payments made for use of the public highways to provide interstate telecommunications services under the license or franchise are less than or equal to and are offset against any linear foot charge owed pursuant to section 9-583, subsection C, paragraphs 2 and 3."</p>					
<p>Arkansas</p>	<p>Ark. Code Ann. § 14-200-101(a)(2) (2002): Cities and towns have jurisdiction to assess franchise fees and other terms and conditions of franchise agreement.</p>	<p>Ark. Code Ann. § 14-200-101(a)(1)(A) (2002): Local franchise fees not to exceed 4.25% of gross receipts from local service or higher amount agreed to by affected provider OR the voters.</p>			<p>Ark. Code Ann. § 14-200-101(b)(1) (2002): A public utility may appeal an ordinance within 20 days of receipt of notice before the Arkansas Public Service Commission.</p>		
	<p>Ark. Code Ann. § 14-200-110 (2002): Municipalities may require from the provider, as a condition of the franchise agreement, all books, records, and other information as to any matter pertaining to its business or organization. Utilities shall provide verified itemized and detailed inventory and valuation of any or all of its property as to which the municipal council or city</p>	<p>Ark. Code Ann. § 14-200-101(a)(1)(D) (2002): Affected utilities may recover fee costs by charging customers an amount equal to the right-of-way fee.</p>					

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	<p>Ark. Code Ann. § 27-67-304(a) (2002): "The rights-of-way provided for all state highways shall be held inviolate for state highway purposes, except as provided in subsections (b) and (c) of this section. No physical or functional encroachments, installations, signs other than traffic signs or signals, posters, billboards, roadside stands, gasoline pumps, or other structures or uses shall be permitted within the right-of-way limits of state highways."</p> <p>Ark. Code Ann. § 27-67-304(b) (2002): As long as it does not interfere with public use of the highways, any political subdivision, rural electric cooperative, rural telephone cooperative, private cable company or public utility may use State Highway Commission lands under existing permits, or under subsequent permits approved by the Commission.</p>						

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California	Cal. Pub. Util. Code § 1004 (2002): Providers must obtain a local franchise, license, or permit before applying for a certificate of public convenience and necessity from the state. Construction may not begin until a certificate of public convenience and necessity is granted by the Public Utility Commission. However, a provider may be exempted from certification requirements by the Commission and be granted registration status instead.	Cal. Pub. Util. Code § 7901.1 (2001): Statutes reserve right of municipalities to impose fees and "exercise reasonable control" over right of way access.			Cal. Pub. Util. Comm., Dec. No. 98-10-058, No. R.95-04-043 (Filed April 26, 1995), No. I.95-04-044 (Filed April 26, 1995); 1998: "Parties to a dispute involving access to utility rights of way and support structures may invoke the Commission's dispute resolution procedures, but must first attempt in good faith to resolve the dispute. Disputes involving initial access to utility rights of way and support structures shall be heard and resolved through the following expedited dispute resolution procedure. ..."	Cal. Gov. Code § 53066 (2001): Any cable television franchise or license awarded by municipality pursuant to this section may authorize the grantee to place wires, conduits and appurtenances for the community antenna television system along or across such public streets, highways, alleys, public properties, or public easements of the granting municipality. Public easements, as used in this section, shall include but shall not be limited to any easement created by dedication to municipality for public utility purposes or any other purpose whatsoever.	Cal. Pub. Util. Code § 10102 (2002): A municipal corporation exercising its rights under this article shall restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and shall locate its use so as to interfere as little as possible with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume.
	Cal. Pub. Util. Code § 1007.5 (2002): Commission rules pre-empt local ordinances.	Cal. Gov. Code § 50030 (2001): "Any permit fee...shall not exceed the			Cal. Pub. Util. Comm., Dec. No. 98-10-058, No. R.95-04-		

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	<p>Cal. Pub. Util. Comm., Dec. No. 98-10-058, No. R.95-04-043 (Filed April 26, 1995), No. I.95-04-044 (Filed April 26, 1995); 1998 APPENDIX A COMMISSION-ADOPTED RULES GOVERNING ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES OF INCUMBENT TELEPHONE AND ELECTRIC UTILITIES: I. PURPOSE AND SCOPE OF RULES A. These rules govern access to public utility rights-of-way and support structures by telecommunications carriers and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights of way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights of way access agreements.</p>	<p>reasonable costs of providing the service for which the fee is charged."</p>			<p>043 (Filed April 26, 1995), No. I.95-04-044 (Filed April 26, 1995); 1998: "In the event that such an application is granted, and the local governmental body refuses to grant access in accordance with the Commission order, the carrier's recourse shall be to file a lawsuit in the appropriate court of civil jurisdiction for resolution." ...</p>		
<p>Colorado</p>	<p>Colo. Rev. Stat. §§ 38-5.5-101 - 38-5.5-108; 38-5.5-104 (2002): Any telecommunications provider authorized to do business in Colorado may construct facilities on state public lands upon payment of just compensation and compliance with the requirements set by the State Board of Land</p>	<p>Colo. Rev. Stat. § 38-5.5-107(1)(b) (2002): Any application or permit fees must be related to the costs incurred by processing the application, and must also be assessed within a reasonable amount of</p>		<p>Colo. Rev. Stat. § 38.5.5.107 (2) (a) (2002): "Any tax, fee, or charge imposed by a political subdivision shall be competitively neutral among telecommunications providers."</p>			

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	Commissioners.	Colo. Rev. Stat. §38-5.5-107(3) (2002): In-kind fee provisions are not allowed, nor may a municipality require one as a condition of consent to use a highway.		<p>Colo. Rev. Stat. § 38-5.5-103(2) (2002): Municipalities cannot discriminate among or grant a preference to competing telecommunications providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any unreasonable requirements for entry to the rights-of-way for such providers.</p> <p>Colo. Rev. Stat. § 38.5.5.102(3) (2002): Cable companies are excluded from the definition of "telecommunications service," and are therefore exempt from right-of-way regulation.</p> <p>Colo. Rev. Stat. § 38.5.5.101(2)(d) (2002): "Access to rights-of-way and oversight of that access must be competitively neutral, and no telecommunications provider should enjoy any competitive advantage or suffer a competitive disadvantage by virtue of a selective or discriminatory exercise of the police power by a local government."</p>			
Connecticut	<p>Conn. Gen. Stat. § 7-130d (2001). Municipalities are granted authority to regulate right-of-way.</p> <p>Conn. Gen. Stat. § 7-148 (2001). Municipalities may regulate installation of facilities and control excavation procedures.</p>	Conn. Gen. Stat. § 7-130 (2001). Municipalities are granted authority to charge fees.			Conn. Gen. Stat. § 16-235 (2001): Carriers may appeal to the Department of Public Utility Control within 30 days after the order is issued from the local government stipulating the terms		

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	<p>Conn. Gen. Stat. § 16-11 (2001): The Department of Public Utility Control will be kept informed as to the condition of all utility facilities, and may order improvements or repairs on these facilities as needed.</p> <p>Conn. Gen. Stat. § 16-18 (2001): The Department of Public Utility Control may require a telecommunications company to move its lines or for multiple telecommunications companies to string their lines together.</p> <p>Conn. Gen. Stat. § 16-228 (2001): Telecommunications companies may construct their lines along public roads or navigable waters, as long as such construction does not obstruct the roads or waters.</p>				<p>...and conditions of the permit. The Department shall process the appeal as speedily as possible.</p>		
Delaware	<p>Del. Code Ann. tit. 26, § 901 (2002): Local authorities are explicitly granted authority over right-of-way management.</p> <p>Del. Code Ann. tit. 22, § 103 (2002): "Street openings. No person shall open or excavate the bed of any street or highway of any city, town or village in this State for the purpose of laying or placing pipes, wires or other conductors therein without first obtaining the consent of the duly constituted authorities of such city, town or village. Nothing in this section shall require such consent before opening or excavating the bed of any such street or highway for the purpose of repairing any pipes, wires or other conductors theretofore lawfully laid or placed in</p>	<p>Del. Code Ann. tit. 30, § 5501 (2002): 4.25% Gross Receipts Tax assessed by PSC on intrastate telecommunications services, including cellular service. Providers may pass through to customers.</p> <p>Del. Code Ann. tit. 30, § 5502(4) (2002): "A tax is imposed upon any distributor of cable television communications commodities and services which tax shall be at the rate of 2.125% of the gross receipts or tariff charges received by the distributor for such commodities or services distributed within this State."</p>				<p>Del. Code Ann. tit. 10, § 61 (2002): Condemnation: "This chapter shall govern the procedure for all condemnations of real and personal property within this State under the power of eminent domain exercised by any authority whatsoever, governmental or otherwise."</p>	<p>Del. Code Ann. tit. 26, § 902(c)(1) (2002): If a telecom or other company alters the street surface in order to place or repair its underground facilities, the company must immediately restore the street surface to its pre-existing condition.</p> <p>Del. Code Ann. tit. 26, § 902(c)(2) (2002): If a company fails to restore the street surface, then the municipality may perform the task and recover its costs from the company.</p>

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	such street or highway."	<p>Del. Code Ann. tit. 26, § 115 (2002): Gross revenues assessment on all public utilities for cost of regulation.</p> <p>Del. Code Ann. tit. 8, § 501-518 (2002): Corporate Franchise Tax: "Every telegraph, telephone or cable company . . . to be incorporated under the laws of this State, shall pay an annual tax, for the use of the State, by way of license for the corporate franchise as prescribed in this chapter."</p>					
DC	D.C. Code Ann. § 10-1141.03 (2002). The Mayor may issue permits to occupy or otherwise use public rights-of-way, public space, and public structures for any purpose. He may do so without regard to whether the permittee owns the property abutting the public areas, and he may revoke the permit at any time. Any leasing or subleasing of the public areas must be with the express consent of the mayor. When a permit is revoked or expires, the Mayor may require the permittee to remove any apparatus constructed in the public areas.	D.C. Code Ann. § 10-1141.04 (2002): Right-of-way access permit fees to cover costs of reviewing permit applications. "The Mayor may allow a permittee to pay a fixed charge for a set period of time, pay an amount based upon the amount of the public right-of-way or public space used or occupied, pay an amount based upon a revenue sharing formula, or provide in-kind services to the District in lieu of a monetary payment, or the Mayor may require a permittee to pay a combination of these items."		D.C. Code Ann. § 34-2004 (2002): Terms and conditions of franchise agreement must be competitively neutral and fees must be nondiscriminatory.		D.C. Code Ann. § 34-1921.08 (2002). Rights to build and lay conduits not compensable in event of condemnation [Formerly '43-1417]	D.C. Code Ann. § 34-2004(c) (2002): "The Mayor shall issue rules to establish and regulate the process through which any alteration or damage to public rights of way in the District of Columbia shall be compensated by the telecommunications service provider whose construction or repair work has altered or damaged public rights of way. The rules shall require the telecommunications service provider to repair any alteration or damage pursuant to specifications and inspection by the District of Columbia Department of Public Works, or require that the telecommunications service provider compensate the District of Columbia for the cost of repair to a public right of way."

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	<p>D.C. Code Ann. § 43-1454(a) (2002): "Any telecommunications provider in the District shall have the right to utilize the public right-of-ways of the District for installation, maintenance, repair, replacement, and operation of its telecommunications system..."</p>	<p>D.C. Code Ann. § 47-2501(3) (2002): "After May 31, 1994, pay to the Mayor 10% of these gross receipts from sales included in bills rendered after May 31, 1994, for a telephone company. . ."</p>				<p>D.C. Code Ann. § 16-1311 (2002) If the Mayor needs District lands for an authorized municipal use, and the property cannot be purchased at a price acceptable to District representatives, then a complaint may be filed in Superior Court for the condemnation of the property and the ascertainment of its value.</p>	
	<p>D.C. Code Ann. § 34-2004(b) (2002): "Prior to constructing each portion of its telecommunications system located within the public ways, a telecommunications service provider shall obtain all necessary construction permits and licenses from the appropriate agency. All such construction shall be performed in compliance with applicable codes and regulations, and all facilities so constructed shall be maintained in compliance with applicable codes and regulations."</p>					<p>D.C. Code Ann. § 16-1301 (2002): "Jurisdiction of District Court. The United States District Court for the District of Columbia has exclusive jurisdiction of all proceedings for the condemnation of real property authorized by subchapters IV and V of this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings."</p>	
						<p>D.C. Code Ann. § 2-1219.19. The District may acquire land, property, easements, or other interests in real property through condemnation through eminent domain in furtherance of public purposes. Any exercise of eminent domain powers must be approved by a 2/3 vote of the District Board. Under this section, the Board must determine that any property to be acquired by this process is one of four types of condemnable land. Any exercise of eminent domain powers must be submitted to the Council for final approval or disapproval within 30 days of submission.</p>	

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Florida	<p>Fla. Stat. Ch. 202.10-202.41 (2002) COMMUNICATIONS SERVICES TAX SIMPLIFICATION LAW Prohibits municipalities and counties from requiring a telecommunications company to enter franchise, license or other agreements. Municipal and county right-of-way rules and regulations may only address placement and maintenance of facilities. Requires local governments to provide notice of proposed right-of-way ordinances to FL Department of State.</p>	<p>Fla. Stat. Ch. 202.10-202.41 (2002) COMMUNICATIONS SERVICES TAX SIMPLIFICATION LAW Municipalities & counties may charge permit fees to recover actual costs (not to exceed \$100) and tax rate reduced by .12%. If no permits, may increase tax rate by .12%.</p> <p>Fla. Stat. Ch. 202.10-202.41 (2002) Florida enacted a harmonized state and local communications services tax system, which functions as a sales or use tax assessed on the retail price of telecommunications services. Fla. Stat. Ch. 337.401(3)(c), (2002). The local tax component varies by locality. Of the combined state and local tax rate (which can exceed 10%), 0.24% is earmarked to replace permit fees foregone by local governments that opt to participate in the tax collection system instead of collecting fees.</p> <p>Fla. Stat. Ch. 202.24(2) (2002). Prohibits in kind compensation.</p>		<p>Fla. Stat. Sec. 202.19. Tax collection scheme applies explicitly to wireless telecommunications providers.</p> <p>Fla. Stat. Ch. 337.401 (3)(a)(2). Cable companies are exempt from the statutory right-of-way access provisions, but do have to pay communications services tax (in lieu of permitting municipalities to negotiate and collect franchise fees.)</p>		<p>Fla. Stat. Ch. 73.161 Right-of-Way for Telephone and Telegraph over Railroad Right-of-Way. If a telecom fails to successfully negotiate with a railroad company for the construction of lines along its right-of-way, then this access may be acquired through eminent domain. The judgment will authorize the petitioner telecom company to enter upon the railroad right-of-way and construct lines. The lines may not be constructed in any way as to interfere with the railroad's business, and the railroad may require the telecom company to move its lines at any time.</p>	

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Georgia	<p>Ga. Code Ann. § 32-4-92 (2002). Authorizes permitting authority of local governments. Locals may establish reasonable regulations for the installation and construction of facilities in right-of-way, but the regulations may not be more stringent than those enforced by the Dept of Transportation to regulate state highway right-of-way. The locality may require a written application specifying the nature, extent and location of the facilities in the area. They may also require the applicant to furnish indemnification bond or other acceptable security to pay for any damage to public road or member of the public.</p>	<p>Ga. Code Ann. § 46-5-1(a) (2002): A telecom company may have right-of-way access to construct and maintain its lines over any state lands, railroads, or private lands as long as it pays due compensation for such use.</p>				<p>Ga. Code Ann. § 48-5-420 (2002): Telecommunications companies are granted special franchise by the state, granting them the power to exercise right of eminent domain, use any public highway in the state and use land above or below public highways. For these privileges, the telecom must remit to the state a special franchise tax.</p>	
	<p>Ga. Code Ann. § 46-5-1(a) (2002): Any telecom company has the right to construct, maintain, or operate its lines along the state public highways, as long as the local municipal authorities approve.</p>	<p>Ga. Code Ann. § 48-5-423 (2002): "Ascertainment of valuations of special franchises; levy and collection of tax. (a) In arriving at a proposed assessment, the</p>				<p>Ga. Code Ann. §22-3-1 (2002). If a telecom company needs to condemn part of a railroad right-of-way in order to construct, maintain, or operate its lines, notice shall be given to the railroad company, and such notice should include: 1</p>	

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	<p>Ga. Code Ann. § 36-34-2(7) (2002): Municipalities have the authority to make contracts with or grant franchises to telegraph and telephone companies, as well as other public utilities.</p>	<p>assessment, the commissioner shall not be bound to accept the valuation fixed for a special franchise in the return made but shall review the return and valuation. When the commissioner refuses to accept the return, the subsequent proceedings shall be in all particulars the same procedures as are provided by law in the case of refusal to accept the returns made by public utilities of their tangible property. (b) Special franchises shall be taxed at the same rate as other property upon the value of the special franchise as returned or upon the value determined by the county board of tax assessors. The tax on special franchises shall be levied and collected in the same manner as is provided by law in the case of the tangible property of public utilities."</p>				<p>Such notice should include: 1. The manner in which the telecom company proposes to construct its lines on the railroad right-of-way; 2. Give the time of the hearing; 3. Give the name of the assessor chosen by the telecom company; and 4. Instruct the railroad company to select their own assessor.</p>	
<p>Hawaii</p>	<p>Haw. Rev. Stat. § 264-13 (2002). The governor or the director of transportation may dispose of easements or rights-of-way along state highways under any terms that are within the public interest.</p>	<p>Haw. Rev. Stat. § 264-7(b) (2002): The director of transportation established the fee schedule for permits. The fee schedule should be calculated to recover</p>				<p>Haw. Rev. Stat. § 101-4 (2002): The right of eminent domain is granted to telecommunications companies, as well as other public utility companies, and public transportation</p>	

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	Haw. Rev. Stat. § 264-6 (2002). State highways may not be disturbed without a permit.	any costs spent on issuing the permit. The applicant shall pay the fee, but the director may waive the fee where he determines that the work to be done will improve the highway or otherwise benefit the state. No fee is required where the only work to be done is the setting of poles to carry overhead wires.				companies.	
Idaho	Idaho Code § 62-618 (2002): Municipalities are not permitted to regulate telecommunications companies.	Idaho Code § 50-329A (2002). Municipal franchise fees may be levied on providers, but levy may not exceed 3% of gross operating revenues; providers may pass through to customers. This franchise fee is in lieu of any other tax or fee imposed by the municipality related to easements, franchises, rights of way, utility lines and equipment installation.					
	Idaho Code § 62-701 (2002): Telecommunications providers may erect facilities and structures on any public lands, including along public roads, waterways, or other lands, as long as those facilities don't disrupt the use of such roads, etc.	Idaho Code §§ 61-1001 & 1004 (2002). Utilities pay yearly gross revenue fee to Public Utilities Commission to reimburse for cost of regulation. This fee is based upon a consideration of the time and expense devoted to the supervision and					

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	<p>Idaho Code § 62-701A(2) (2002): "With respect to the installation of its facilities within public rights-of-way, the telecommunications provider shall at all times be subject to the authority of a city, county or highway district. No grant of authority pursuant to this section shall be deemed to waive other rights or requirements of the codes, ordinances or resolutions of a city, county or highway district regarding permits, reasonable fees to be paid, manner of construction, or the like, nor to grant any property interest in the public rights-of-way."</p>	<p>regulation of each class of . . . public utilities during the preceding calendar year, including salaries and wages of the commissioners and employees and all other necessary and lawful expenditures of the commission.</p>					
<p>Illinois</p>		<p>35 Ill. Comp. Stat. 635/5 (2002): Recognizing that telecommunications providers were becoming more competitive, the Illinois General Assembly abolished municipal franchise fees and established a uniform municipal infrastructure maintenance fee. Although this fee is meant to replace the revenue that municipalities lost from the franchise fees, the statute provides that the fee may not be related to the use of public rights-of-way or to the costs of maintaining and regulating such use.</p>		<p>35 Ill. Comp. Stat. 625/10(b). Cable companies are excluded from the definition of "telecommunications service," and are therefore exempt from right-of-way regulation.</p>		<p>220 Ill. Comp. Stat. 65/4 (2002): Every telecommunications provider has a right of entry on private lands when necessary to maintain, alter, or extend its system. Compensation for such condemnation must be calculated according to provisions of the Telegraph Act. (220 ILCS 55/0.01 et. seq.)</p>	

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		<p>35 Ill. Comp. Stat. 636/5-60 (2002): With the implementation of the municipal infrastructure maintenance fee, municipalities were deemed to have waived their rights to any compensation that might subsequently accrue under a franchise agreement executed before January 1, 1998, if: 1) the municipality imposes a tax at a rate exceeding 5%; 2) the municipality affirmatively waives such fees; or 3) the municipality has a municipal infrastructure maintenance fee in place.</p> <p>35 Ill. Comp. Stat. 635/15 (2002): The state fee portion of the municipal infrastructure maintenance fee is .05% of the gross retail revenues.</p> <p>35 Ill. Comp. Stat. § 635/20 (a), (b) (2002): The municipality's portion of the municipal infrastructure maintenance fee may not exceed 1% of gross retail revenues in areas with a population of 500,000 or less, or 2% in areas with a population of 500,000 or more.</p>					

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		35 Ill. Comp. Stat. 635/30 (2002): With the implementation of the municipal infrastructure maintenance fee, municipalities may no longer assess franchise fees or other charges on telecommunications providers.					
Indiana	Ind. Code § 8-1-2-101(b) (2002): Municipalities or county executives may operate and maintain the public roads and other lands for the benefit of public safety. They may also manage the rights-of-way associated with the public roads or other lands, and may require compensation for their use. Such compensation must be competitively neutral and non-discriminatory.	Ind. Code § 8-1-2-101(b) (2002): Compensation may not exceed the municipality's direct and actual costs of managing the right-of-way for the public utility. These costs shall be assigned individually to the public utility creating the costs. Ind. Code § 8-1-2-101(b) (2002): Management costs may include the costs of: 1. Registering occupants; 2. Verifying occupation; 3. Inspecting job sites and restoration projects; 4. Restoring work inadequately performed; 5. Administering a restoration ordinance that ensures the right-of-way will be returned to its	Ind. Code § 8-1-2-101(a)(4) (2002). A municipality has 30 days in which to approve construction on a right-of-way. After 30 days of inaction, may petition the public utility commission for a hearing.	Ind. Code § 8-1-2-101(b)(2002) The assessment of compensation for the use of public rights-of-way must be competitively neutral and nondiscriminatory. Ind. Code § 8-1-2-101(b)(2002) This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications.) However, it does not deal with the issue of wireless transmitters.			Ind. Code § 8-1-2-101(b) (2002): Management costs may include the costs of: . . .4. Restoring work inadequately performed; 5. Administering a restoration ordinance that ensures the right-of-way will be returned to its original condition . . .

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		<p>will be returned to its original condition; and 6. any management costs associated with the implementation of any other ordinance associated with rights-of-way. These costs may not include rents, franchise fees, or any other fee paid by a public utility for occupation of the right-of-way.</p>		<p>Ind. Code § 8-1-2-101(d)(2002) None of the right-of-way statutes affect franchise agreements between a municipality and a cable company.</p>			
<p>Iowa</p>	<p>Iowa Code § 364.2(4)(a) (2002): "A city may grant to any person a franchise to erect, maintain, or operate plants and systems [for telecommunications systems and other utilities] . . . within the city for a term of not more than 25 years. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a hearing . . . The franchise may be granted, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted . . .</p> <p>Iowa Code § 364.2(4)(e) (2002): "The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised."</p>	<p>Iowa Code § 480A.3 (2002): The only fee that a municipality can recover from a utility are those management costs caused by the utility's occupation of the right-of-way. If the management costs are attributed to more than one entity, the costs shall be allocated proportionately to the users of the right-of-way. Any other obligations must be imposed on a competitively neutral basis.</p> <p>Iowa Code § 480A.4 (2002): A municipality may not allow in-kind services in lieu of fees, nor may it require in-kind services as a condition for use of the right-of-way.</p>		<p>Iowa Code § 480A.2 (2002): This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications.) However, it does not deal with the issue of wireless transmitters.</p> <p>Iowa Code § 480A.2 (2002): Cable companies are excluded from the definition of "public utility," and are therefore exempt from right-of-way regulation. (Other telecommunications providers are included.)</p>	<p>Iowa Code § 480A.5 (2002). Arbitration upon completion of administrative review.</p>	<p>Iowa Code § 364.2(4)(e) (2002): "The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised."</p>	

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>Iowa Code § 477.1 (2002): Any telecommunications provider may construct its system along the public roads, along public waterways, or through public or private lands. However, construction along a primary road is subject to rules adopted by the state department of transportation.</p> <p>Iowa Code § 480A.1- § 480A.6 (2002). § 480A.1: "Purpose. The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way."</p>						
Kansas	<p>Kan. Stat. Ann. § 17-1902(B) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002): Any provider has the right to construct systems and related facilities along the state's public rights-of-way. The systems and facilities must be constructed so as not to obstruct other entities' use of the rights-of-way.</p> <p>Kan. Stat. Ann. § 17-1902(k) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002): A city may require a telecommunications provider to repair all damage to a right-of-way cause by the use of that right-of-way. If the provider fails to make such repairs, the city may effect the repairs and charge the provider for their cost.</p>	<p>Kan. Stat. Ann. § 17-1902(N) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002). A city may charge for the reasonable, actual, and verifiable costs of managing the city right-of-way. Fees may include: a permit fee, excavation fee, inspection fee, repair and restoration costs, performance bond.</p> <p>Kan. Stat. Ann. § 17-1902(h) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002): A city may not require a telecommunications company to provide it with in-kind services.</p>	<p>Kan. Stat. Ann. § 17-1201(h) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002). Franchise applications must be processed within 90 days of receipt.</p> <p>Kan. Stat. Ann. § 17-1902(l) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002). A city must process a valid construction application with 30 days</p>	<p>Kan. Stat. Ann. § 17-1902(D) (2002) (Amended by Senate Bill 397, effective Jul 1, 2002). The ability of a provider to use a right-of-way is subject to public health and safety considerations. A city may regulate the use of a right-of-way provided that such exercise is competitively neutral and nondiscriminatory.</p> <p>Kan Stat. Ann. § 17-1902(a)(1) (2002): This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications.) However, it does not deal with the issue of wireless transmitters</p>	<p>Kan. Stat. Ann. § 17-1902(F). (2002) (Amended by Senate Bill 397, effective July 1, 2002) Before the city government can deny a provider access to a right-of-way, it must give the provider notice and an opportunity for public hearing. The subsequent denial may be appealed to district court.</p>		<p>Kan. Stat. Ann. § 17-1902(k) (2002) (Amended by Senate Bill 397, effective July 1, 2002): A city may require a telecommunications provider to repair all damage to a right-of-way cause by the use of that right-of-way. If the provider fails to make such repairs, the city may effect the repairs and charge the provider for their cost.</p> <p>Kan. Stat. Ann. § 17-1902(N) (2002) (Amended by Senate Bill 397, effective July 1, 2002). A city may charge for the reasonable, actual, and verifiable costs of managing the city right-of-way. Fees may include: . . . repair and restoration costs . . .</p>

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		<p>Kan. Stat. Ann. § 12-2001(g), (j). Each city may assess a one-time franchise application fee to cover the costs of reviewing the application. It may also impose either an access line fee of up to \$2.00 per access line per month, or a gross receipts fee of up to 5% on local services.</p>					
Kentucky	<p>Ky. Rev. Stat. Ann. § 278.540 (2002): Once just compensation has been made, the provider gains the right to construct, maintain and operate its lines through any public lands of this state and across and along any public road.</p>	<p>Ky. Rev. Stat. Ann. § 278.540(1) (2002): Just compensation for right-of-way access is authorized.</p> <p>Ky. Rev. Stat. Ann. § 278.130 (2002): Cities are prohibited from assessing occupational license tax on public utilities. Instead, PSC assesses annual license tax on utilities.</p>				<p>Ky. Rev. Stat. Ann. § 278.540(1) (2002): As long as just compensation is paid, telecommunications companies have the right to construct and maintain its lines on any public lands, public roads, or navigable waters.</p> <p>Ky. Rev. Stat. Ann. § 278.540(2) (2002): A telecommunications company may contract with a private property owner for right-of-way over private lands, or if they are unable to reach an agreement by contract, the telecommunications company may condemn the private land under the Eminent Domain Act of Kentucky. (Ky. Rev. Stat. Ann. § 416.450 - 416.680).</p>	
Louisiana	<p>La. Rev. Stat. Ann. § 48:381.1(C) (2002). Providers requesting access to state highways must apply for a right-of-way access permit with the PSC chief engineer.</p>	<p>La. Rev. Stat. Ann. § 48:381.2 (A)(2), (2002): When fiber optic cable providers apply for permits, their application commits them to a one-time permit fee.</p>		<p>La. Rev. Stat. Ann. § 48:381.2(A)(1)(2002): "The chief engineer or his duly authorized representative may issue nonexclusive permits, on a competitively neutral and nondiscriminatory basis for use of public rights of way</p>			

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	<p>La. Rev. Stat. Ann. § 48:381.3(A)(2) (2002). Providers seeking access to locally controlled right-of-way are subject to the ordinances and resolutions of the locality where they are located.</p> <p>La. Rev. Stat. Ann. § 33:4401(2002): Municipalities may grant franchises to telecommunications companies or other public utilities, allowing them to use public streets, sewers, alleys, etc. for their wire system. These franchises may not be exclusive, and may not extend beyond 60 years.</p>	<p>La. Rev. Stat. Ann. § 48:381.2(F) (2002): In-kind services (shared resources) may help defray permit fee costs for providers. "F. The fee for fiber-optic telecommunication installations placed within a controlled access highway right-of-way shall not exceed the actual cost of the administration of the program. The department may reduce fees in exchange for shared resources. The department is authorized to reduce fees for its agents, defined for the purposes of this Subsection as those applicants who erect facilities on behalf of the department in order to conduct department work."</p>		<p>use of public rights-of-way, to utility operators for the purpose of installation of fiber-optic cable facilities within controlled-access highway rights-of-way."</p>			
Maine	<p>Me. Rev. Stat. Ann. tit. 35-A § 2502 (2001): Statutes specifically designate licensing authority among municipal, county, and state governments, based on the location of the right-of-way.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2507 (2001): No provider may begin construction without a permit from the proper licensing authority.</p>	<p>Me. Rev. Stat. Ann. tit. 35-A §§ 2503, 2510 (2001): There are two permits, the right-of-way location permit and the right-of-way excavation permit. Each one has its own fee.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2510-1 (2001): Local excavation fees may not exceed the reasonable cost of replacing the excavated pavement.</p>			<p>Me. Rev. Stat. Ann. tit. 35-A § 2503-13 (2001). Appeals may be filed within 2 weeks of the decision and must be heard within 30 days of the filing of such appeal.</p>	<p>Me. Rev. Stat. Ann. tit. 35-A § 7904 (2001): Telecommunications companies may purchase or take land as needed for the public use of constructing lines, poles, etc. If land is taken damages must be estimated and paid in accordance with sections 6502-6512.</p>	<p>Me. Rev. Stat. Ann. tit. 35-A § 2512 (2001): If the provider does not properly restore the excavated right-of-way, the local government may restore the right-of-way and charge the provider the cost of redoing the work plus 50%.</p>

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	<p>Me. Rev. Stat. Ann. tit. 35-A §§ 2503-2505 (2001): Permits may require description of facilities. Terms and conditions of permits may specify other requirements determined necessary in the best interests of the public safety and use of the right-of-way so as not to obstruct use for public travel.</p> <p>Me. Rev. Stat. Ann. tit. 35-A §§ 2503 - 2506 (2001): Providers are liable only for acts of negligence in the installation or maintenance of the facility.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2503-8,9 (2001): Additional permits are not required for replacing or maintaining facilities.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2503-14 (2001): Permit required for installing underground facilities.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2312-1,2 (2001): If a provider owns facilities in a municipally designated historic district, the municipality may require the provider to offer services to buildings located therein, but the municipality is required to bear the cost of relocating or constructing facilities to those buildings.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2522 (2001): Providers must provide written notice to local government and interested area residents before cutting, trimming or removing trees in order to access right-of-way.</p>						

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>Me. Rev. Stat. Ann. tit. 35-A § 2301, 2307 (2001): Except as limited, every corporation organized under section 2101 for the purpose of operating telephones and every corporation organized for the purpose of transmitting television signals by wire may construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may construct its lines and necessary erections and fixtures for them along, over, under and across any of the roads and streets and across or under any of the waters upon and along the route or routes subject to the conditions and under the restrictions provided in this chapter.</p> <p>Me. Rev. Stat. Ann. tit. 35-A § 2307 (2001): Telecommunications companies and public utilities may place their systems under streets and highways as long as they obtain a written permit from the licensing authority. The permit may be subject to additional rules concerning the location and construction of such systems.</p>						
<p>Maryland</p>	<p>Md. Ann. Code art. 23A, § 2(13) (2002): Municipalities have the express power to grant exclusive or non-exclusive franchises to a community antenna system or cable systems that use rights-of-way. The municipality may impose franchise fees and establish rates, rules and regulations for the franchises.</p>					<p>Md. Code Ann., Public Utility Companies § 5-410 (4)(b) (2002): Telecommunications companies have the power to construct their systems on any authorized route, and acquire by condemnation any property deemed necessary for their purposes.</p>	

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Mass.	Mass. Gen. Laws Ann. ch. 166 § 25 (2002): Municipalities may permit construction of telecommunications systems in public areas, and they may also establish reasonable regulations for the construction and maintenance of telecommunications systems, as well as other public utility systems.	Mass. Gen. Laws Ann. ch. 166 § 25A (2002): The telecommunications and energy department has the authority to set rates for right-of-way use, and in setting those rates the department must consider consumer interests.					
	Mass. Gen. Laws Ann. ch. 166 § 22 (2002): Providers must provide written notice of intent to access right-of-way for construction purposes. The municipality must hold a hearing and issue written notice of the hearing. After the hearing, the municipality may grant to the provider a location for the lines and allowances for the number and height of the lines to be installed.	Mass. Gen. Laws Ann. ch. 166 §25A (2002): The telecommunications and energy department shall set reasonable rates for telecommunications attachments to existing right-of-way. The rates shall not be lower than the cost to the utility providing the existing facility, nor more than the proportional cost of the attachment.					
	Mass. Gen. Laws Ann. ch. 166 § 25A (2002): Any municipal regulations pertaining to the installation or construction of telecom lines must be approved by the state Department of Telecommunications and Energy.						
	Mass. Gen. Laws Ann. ch. 166 § 38 (2002): Penalties for intentional or malicious injury of telecom facilities in right-of-way.						

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Michigan	<p>Mich. Comp. Laws Ann. §§ 484.3101-484.3120 (2002) Metropolitan extension telecommunications rights-of-way oversight act. § 484.3103: "(1) Pursuant to section 27 of article VII of the state constitution of 1963 and any other applicable law, the metropolitan extension telecommunications rights-of-way oversight authority is established as an autonomous agency within the department of consumer and industry services."</p>	<p>Mich. Comp. Laws Ann. § 484.3108 (2002) Maintenance fee. "... (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</p>	<p>Mich. Comp. Laws Ann. § 484.3106 (2002): The commission website has information regarding the length of time each municipality requires to grant an application.</p>	<p>Mich. Comp. Laws Ann. § 484.3115(3) (2002): "... A provider's right to access and use of a public right-of-way shall not be unreasonably denied by a municipality. ..."</p>	<p>Mich. Comp. Laws Ann. § 484.3117 (2002). If requested, the Commission may review an Oversight Authority decision de novo. The Commission's decision or order is reviewable pursuant to section 26 of 1901 PA 300, MCL 462.26.</p>		
	<p>Mich. Comp. Laws Ann. § 484.3115 (2002): Municipalities shall grant providers a permit to use any public rights-of-way located within the municipal jurisdiction. If an application involves an easement or public place, then the municipality should act promptly in granting the permit.</p>	<p>Mich. Comp. Laws Ann. § 484.3106 (2002): When applying for a municipal permit, a provider must pay a \$500 application fee. This fee must be paid to each municipality where the provider needs access to a right-of-way.</p>	<p>Mich. Comp. Laws Ann. § 484.3115 (2002): "(3) A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-</p>		<p>Mich. Comp. Laws Ann. § 484.3107 (2002). If irresolvable disputes arise between a municipality and a provider,... "the commission shall appoint a mediator within 7 days from the date of the notice to make</p>		

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>Mich. Comp. Laws Ann. §484.3114 (2002): "(1)(a) Before the passage of any ordinance or resolution authorizing a county or municipality to either construct telecommunication facilities or provide a telecommunication or cable modem service provided through a broadband internet access transport service, a county or municipality shall conduct at least one public hearing. A notice of the public hearing shall be provided as required by law."</p> <p>Mich. Comp. Laws Ann. § 484.3115 (2002): If in constructing its facilities a provider damages or causes damage to the street or highway adjacent to the right-of-way, the provider must return the street or highway to its preexisting condition.</p>		way."		<p>recommendations within 30 days from the date of the appointment for a resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of a resolution of the dispute. ..."</p>		

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
Minnesota	Minn. Stat. § 237.04 (2002): The Minn. Department of Commerce has the authority to establish rules for the use of right-of-way by public utilities. These rules shall include regulations for construction, maintenance, and operation of facilities along right-of-ways.	Minn. Stat. § 237.163(6)(a) (2002): "A local government unit may recover its right-of-way management costs by imposing a fee for registration, a fee for each right-of-way permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way user when that user causes the local government unit to incur costs as a result of actions or inactions of that user. A local government unit may not recover from a telecommunications right-of-way user costs caused by another entity's activity in the right-of-way."		Minn. R. 7819.1000(2) (2002) "Permit fees must be allocated in a competitively neutral manner and must be imposed in a manner so that aboveground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way."			

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>Minn. R. 7819.4000 (2002) Municipalities may establish a right-of-way mapping system to facilitate right-of-way management, enhance public safety, improve right-of-way design, and encourage cooperation between municipalities.</p>	<p>Minn. Stat. § 237.163(6)(b) (2002): "Fees, or other right-of-way obligations, imposed by a local government unit on telecommunications right-of-way users under this section must be: (1) based on the actual costs incurred by the local government unit in managing the public right-of-way; (2) based on an allocation among all users of the public right-of-way, including the local government unit itself, which shall reflect the proportionate costs imposed on the local government unit by each of the various types of uses of the public rights-of-way; (3) imposed on a competitively neutral basis; and (4) imposed in a manner so that aboveground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way."</p>		<p>Minn. Stat. § 237.162 (2002): This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications.) However, it does not deal with the issue of wireless transmitters.</p>			

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>MINNESOTA ADMINISTRATIVE CODE, PUBLIC UTILITIES COMMISSION, CHAPTER 7819 PUBLIC RIGHTS-OF-WAY STANDARDS ---->>></p>	<p>Minn. Stat. § 237.163(7)(d) (2002): "A local government unit may not collect a fee imposed under this section through the provision of in-kind services by a telecommunications right-of-way user, nor may a local government unit require the provision of in-kind services as a condition of consent to use the local government unit's public right-of-way."</p> <p>Minn. R. 7819.1100(3) (2002): "Degradation fee. A right-of-way user may elect to pay a degradation fee in lieu of restoration. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and the degradation fee must not include the cost to accomplish these responsibilities."</p>		<p>Minn. Stat. § 237.162 (2002): Cable systems are exempted from the definition of "telecommunications right-of-way user."</p>			

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		Minn. R. 7819.1000(1) (2002): "Permit fee. A local government unit that requires a permit for excavation in or obstruction of the public right-of-way shall make its permit fee schedule available to the public. The permit fee schedule must be established in advance and designed to recover the local government unit's actual costs incurred in managing the public right-of-way."					

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		<p>Minn. R. 7819.1000(2) (2002): "Allocation of permit fees. Permit fees must be based on an allocation among all users of the public right-of-way, which shall include the local government unit itself, so as to reflect the proportionate costs imposed on the local government unit by each of the various types of users of the public rights-of-way. Although the local government unit must be allocated its proportionate share of permit fees, the local government unit need not transfer funds to pay permit fees. Permit fees must be allocated in a competitively neutral manner and must be imposed in a manner so that aboveground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way."</p>					

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
		<p>Minn. R. 7819.1000(3) (2002): "Delay penalty. A local government unit may establish and impose a reasonable penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty must be established from time to time by resolution of the local government unit's governing body. A delay penalty must not be imposed if the delay in project completion is due to circumstances beyond the control of the applicant, including without limitation inclement weather, acts of God, or civil strife."</p>					
<p>Mississippi</p>	<p>Miss. Code Ann. § 21-27-1 (2002): Municipalities do not have the right to grant exclusive use of rights-of-way, nor may they grant a franchise without compensation, or for a period of more than 25 years.</p> <p>Miss. Code Ann. § 21-37-3 (2002): ". . . Municipalities shall have the power to exercise full jurisdiction in the matter of streets, sidewalks, sewers, and parks; to open and lay out and construct the same; and to repair, maintain, pave, sprinkle, adorn, and light the same."</p>						

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
Missouri	<p>Mo. Rev. Stat. § 67.1832 (2001): Municipalities shall permit telecommunication companies and other public utilities to construct, maintain and operate their systems on public rights-of-way.</p>	<p>Mo. Rev. Stat. § 67.1840.2(1) (2001): "Right-of-way permit fees . . . shall be: [b]ased on the actual, substantiated costs reasonably incurred by the political subdivision in managing the public right-of-way."</p> <p>Mo. Rev. Stat. § 67.1830(5) (2001): ""Management costs" or "rights-of-way management costs", the actual costs a political subdivision reasonably incurs in managing its public rights-of-way, including such costs, if incurred, as those associated with the following: (a) Issuing, processing and verifying right-of-way permit applications; (b) Inspecting job sites and restoration projects; (c) Protecting or moving public utility right-of-way user construction equipment after reasonable notification to the public utility right-of-way user during public right-of-way work; (d) Determining the</p> <p>Mo. Rev. Stat. § 67.1842.3 (2001): Prohibits in-kind</p>	<p>Mo. Rev. Stat. § 67.1836.3 (2001): 31 day deadline for right-of-way applications relating to a specific excavation.</p>	<p>Mo. Rev. Stat. § 67.1836 (2001): Municipalities may deny right-of-way permits if they provide the applicant with a competitively-neutral and nondiscriminatory reason for denial, or if they provide an reasonable alternative.</p> <p>Mo. Rev. Stat. § 67.1830 (2001): This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications.) However, it does not deal with the issue of wireless transmitters.</p>	<p>Mo. Rev. Stat. § 67.1838 (2001): Disputes to be reviewed by governing body of the political subdivision -- mediation or binding arbitration permitted upon completion of administrative review.</p>		<p>Mo. Rev. Stat. § 67.1834 (2001): The right-of-way user is obligated to restore the right-of-way and any adjacent streets or highways to their preexisting condition. If they do not make the necessary repairs, the municipality is authorized to make the repairs and require the user to provide reimbursement for the costs.</p>

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
<p>Montana</p>	<p>Mont. Code Ann. § 7-13-2220 (2002): "Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities."</p>					<p>Mont. Code Ann. § 70-30-102 (2002): Eminent domain may be exercised over private lands for the erection of telecommunications facilities, among other uses.</p>	
	<p>Mont. Code Ann. § 7-3-4449 (2002): "The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof."</p>						
	<p>Mont. Code Ann. § 7-14-4102 (2002): Local government may regulate and prevent the use or obstruction of streets, sidewalks and public grounds by signs, poles, wires, or any obstruction.</p>						
	<p>Mont. Code Ann. § 69-4-101 (2002): A telecommunications company or other public utility may construct its system facilities along the public state roads. The construction of this system may not impede road use, nor may it threaten public safety.</p>						

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Nebraska	Neb. Rev. Stat. Ann. § 86-704(1) (2002): A telecommunications company or other public utility may construct its system facilities along the public state roads, public lands, or private lands if necessary. The construction of this system may not impede road use, and any wires or cables must be at least 18 feet above highway crossings.	Neb. Rev. Stat. Ann. § 86-704 (4)(a) (2002): "A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than: (i) An occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525; and (ii) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits."		Neb. Rev. Stat. Ann. § 86-704(4)(b) (2002): "Any tax, fee, or charge imposed by a municipality shall be competitively neutral."		Neb. Rev. Stat. Ann. § 86-705 (2002): "Right-of-way; condemnation; procedure. Any telecommunications company may enter upon private lands to survey the lands for the purpose of obtaining a right-of-way. Every owner of an interest in private lands to be occupied by any telecommunications lines shall be compensated for any right-of-way appropriated pursuant to sections 86-701 to 86-707. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724."	

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		<p>Neb. Rev. Stat. Ann. § 86-704 (2002): (4)(a)(ii): Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs. "(6) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway."</p>					
<p>Nevada</p>	<p>Nev. Rev. Stat. § 707.280 (2002): Anyone constructing a telecommunications line has the right-of-way for that line and any other lands, public or private, that may be necessary to construct and operate that line.</p> <p>Nev. Rev. Stat. § 707.250 (2002): A telecommunications company registered in the state of Nevada may construct and maintain their lines through any public or private lands, along public roads, or along navigable waters, provided the lines do not cause an obstruction.</p> <p>Nev. Rev. Stat. § 268.088 (2002): "Municipalities are not authorized to impose any terms or conditions on a franchise for the provision of telecommunications service other than terms or conditions concerning the placement and location of the telephone lines and fees imposed for a business."</p>						

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New Hampshire	N.H. Rev. Stat. Ann. § 231:161, I. (a)-(c) (2002): Permits to access state-maintained right-of-way must be acquired from the NH Transportation Commission. Local right-of-way access must be obtained from local governments.	N.H. Rev. Stat. Ann. § 231:165 (2002): Payment for the town clerk's services and fees should be made by the provider. A minimum \$10 fee is authorized by state statutes.	N.H. Rev. Stat. Ann. § 231:164 (2002): The proper right-of-way authorities must process the permit within six months after the permit application is made.		N.H. Rev. Stat. Ann. § 231:166 (2002): The provider, if dissatisfied with the decision of the local government or Transportation Commission, may appeal to the Superior Court within 60 days after the respective governmental authority has delivered their decision.		N.H. Rev. Stat. Ann. § 231:185 (2002): Providers must restore right-of-way to original condition as soon as possible after construction is complete.
	N.H. Rev. Stat. Ann. § 231:161 II (2002): Permits may not last longer than one year or two years if the governing authority is petitioned for an extension.						
	N.H. Rev. Stat. Ann. § 231:184 (2002): Providers may not begin right-of-way construction until they also obtain the consent of the proper authorities.						
	N.H. Rev. Stat. Ann. § 231:186 (2002): Providers are liable for all damages to the right-of-way or anyone injured due to the excavation.						
	N.H. Rev. Stat. Ann. § 231:189 (2002): Willful damage to conduits within right-of-way will result in the liability of the guilty party for three times the damages sustained and he/she shall be guilty of a misdemeanor or a felony, depending on the nature of the case.						
	N.H. Rev. Stat. Ann. § 48:17-10 (2002): Municipal or county government consent must be obtained before accessing right-of-way under their jurisdiction.						
New Jersey	N.J. Stat. Ann. § 48:17-11 (2002): "The municipal or county government may regulate the use of all right-of-way with police and other regulations and restrictions."					N.J. Stat. Ann. § 48:17-9.1 (2002): A telecommunications company may condemn private lands as is reasonably necessary for the purpose of serving the public.	

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>N.J. Stat. Ann. § 48:5A-20(a) (2002): "Upon obtaining the prior approval of the board, a CATV company may construct and maintain the wires, cables, and conduits necessary to its business upon, under or over any highway, and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables; provided, however, that such wires, cables and fixtures shall be so placed or constructed as not to unreasonably inconvenience public travel on the highway or the use thereof by public utilities or other persons or organizations having rights therein."</p>						
<p>New Mexico</p>	<p>N.M. Stat. Ann. §3-42-1 (2002): Franchise ordinances must be published twice during the 30-day period following their adoption. If opposed by a number of residents equal to 20% of the voters in the last regular municipal election, the ordinance must be approved by a public vote.</p>						

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	<p>N.M. Stat. Ann. §3-42-2A (2002): "If previous to the incorporation of a municipality, the board of county commissioners has granted to any person right-of-way over, upon, in and about the streets of the municipality for the erection, construction, maintenance or operation of a public utility, and such person has erected, constructed, or in good faith commenced the erection or construction of such a utility, the governing body shall, without a vote by the electorate: (1) authorize the completion of the system; (2) authorize the continued or subsequent operation and maintenance of the system; (3) recognize the rights acquired by the person erecting or constructing such a system; and (4) grant such a person a franchise for the maximum term of years allowed by law upon such terms as are fair, just and equitable to all parties concerned. State ROW rules governing state administration of ROW for telecoms."</p> <p>N.M. Stat. Ann. § 19-7-57(2002): The Commissioner may grant rights-of-way and easements to telecommunications providers and other public utilities. The grantee shall pay the price set by the Commissioner, and this price will be at least the minimum price for the lands.</p>						
New York	<p>N.Y. Const. Art. IX, § 2 (c)(6): Local governments have authority over the management of its streets and property.</p>						

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	<p>N.Y. Gen City Law § 20 (Consol. 2002): Cities have the right to grant franchises or rights to use public waters, streets, or lands located within the city.</p> <p>N.Y. Gen City Law § 20 (Consol. 2002): Cities have the power to purchase, lease, and regulate the lands inside its jurisdiction.</p> <p>N.Y. Village Law § 4-412 (Consol. 2002): Villages have the right to grant franchises or rights to use public waters, streets or lands located within its jurisdiction.</p> <p>N.Y. Town Law § 64 (Consol. 2002): Towns have the right to grant franchises or rights to use public waters, streets or lands located within its jurisdiction.</p> <p>N.Y. Transp. Corp. Law § 27 (Consol. 2002): Telecommunications companies may construct their lines along public roads, navigable waters, or other public lands, provided that the lines do not impede the use of such roads, etc.</p>						
<p>North Carolina</p>	<p>N.C. Gen. Stat. § 62-39 (2002) Public Utility Commission has the power to regulate crossings of telephone, telegraph, electric power lines and pipelines and rights-of-way of railroads and other utilities by another utility</p> <p>N.C. Gen. Stat. § 62-182 (2002): Telecommunications companies and other public utilities have the right to contract with private land owners for rights-of-way.</p>					<p>N.C. Gen. Stat. § 62-183 (2002): Telecommunications companies and other public utilities have a right to condemn private lands for the construction, maintenance, and operation of the telecommunications system, as long as just compensation is paid for the use of the land.</p>	

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North Dakota	<p>N.D. Cent. Code § 49-09-16 (2002): Municipalities may grant rights-of-way, on the public lands and roads under their jurisdiction, for the construction of a telecommunications system or other public utility system. The municipality granting the right of way may also specify the rules and conditions attached to the right-of-way.</p>	<p>N.D. Cent. Code § 49-21-26 (2002): After December 31, 1998, all telecommunications recovery fees must be approved by the municipality electorate.</p> <p>N.D. Cent. Code § 49-21-26 (2002): A municipality may request that a telecommunications company move its facilities from the public right of way, and the telecommunications company must pay for such removal.</p> <p>N.D. Cent. Code § 49-21-26 (2002): Recovery fees may only include the municipality's costs of managing the right of way; any other fees must be assessed on a competitively neutral basis. If the management costs are attributable to more than one entity, the recovery fee must be assessed to all parties on a proportional basis.</p> <p>N.D. Cent. Code § 49-21-27 (2002): Municipalities may not require in kind services in lieu of a fee or as a pre-requisite to right-of-way use.</p>		<p>N.D. Cent. Code, § 49-21-01 (2002): This section specifically defines "right-of-way" as excluding airwaves above the streets (so not including wireless communications). However, it does not deal with the issue of wireless transmitters.</p>	<p>N.D. Cent. Code § 49-21-28 (2002). Arbitration upon completion of administrative review.</p>		

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Ohio	Ohio Rev. Code Ann. § 4939.01 - 4939.09 (Anderson 2002); § 4939.02: Ohio's policy regarding rights-of-way grants authority to municipalities to manage rights-of-way, ensures lawful fee recovery, and promotes municipal coordination and standardization.	Ohio Rev. Code Ann. § 4939.05 (B) (Banks-Baldwin 2002): Municipalities may charge different fees for the use of their rights-of-way, based on the amount of public land used, the type of public utility, or any other different treatment justified by public health and safety concerns. This includes a complete waiver of the fee.	Ohio Rev. Code Ann. § 4939.03(C) (Anderson 2002): Municipalities must approve or deny applications within 60 days of receipt.	Ohio Rev. Code Ann. § 4939.04 (Anderson 2002): Municipalities shall provide access to rights-of-way on a competitively neutral and nondiscriminatory basis.	Ohio Rev. Code Ann. § 4939.06 (Anderson 2002) "Public utility may appeal fee. (A) If a public utility does not accept a public way fee levied against it pursuant to the enactment of an ordinance by a municipal corporation, the public utility may appeal the public way fee to the public utilities commission."		
	Ohio Rev. Code Ann. § 5571.16 (Anderson 2002): Municipalities may require a permit to excavate below local roads except where such excavation is necessary to repair a facility already in place.	Ohio Rev. Code Ann. § 4939.05 (C) (Banks-Baldwin 2002): Fees charged may only reflect actual costs of managing the rights-of-way, plus any demonstrable future costs.		Ohio Rev. Code Ann. § 4939.04 (Anderson 2002): "(2) Nothing in division (A)(1) of this section prohibits a municipal corporation from establishing priorities for access to or occupancy or use of a public way by a public utility or cable operator when the public way cannot accommodate all public way occupants or users, which priorities as applied to public utilities or cable operators shall not be unduly discriminatory and shall be competitively neutral."			
		Ohio Rev. Code Ann. § 4939.05 (A) (Banks-Baldwin 2002): Ohio prohibits the use of in-kind services in lieu of fees.					
Oklahoma	Okla. Const. Art. IX, § 2: Telecommunications companies and other public utilities have a right to construct their lines within the state, and to connect with like lines at the state border.					Okla. Stat. Tit.18 § 601 (2003): Telecommunications companies have a right to condemn railroad property in order to build their systems.	
	Okla. Stat. Tit.11 § 36-101(2003): Municipal governments are authorized to regulate and control use of ROW in the municipality.						

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	Okla. Stat. Tit.18 § 601 (2003): Telecommunications companies are granted a right of way over public and private lands and roads, subject to the local authorities.						
Oregon	Or. Rev. Stat. § 221.515 (2001): Municipalities have the authority to regulate and collect taxes for the use of rights-of-way within their jurisdiction.	Or. Rev. Stat. § 221.515 (2001): Municipalities may collect a privilege tax for the use of rights-of-way, not to exceed 7% of the gross revenues (earned within the municipality) of a telecommunications provider.					
	Or. Rev. Stat. § 758.010 (2001): Any telecommunications company or other public utility company has the right to construct and operate its system along public roadways, navigable waters, or other public lands, so long as it does not obstruct the use of such roads, waters, or lands.	Or. Rev. Stat. § 221.515 (2001): If a telecommunications company is paying the privilege tax, then it does not have to pay any other compensation. To the extent that any other fees are levied, they will be deducted from the privilege tax.					
Pennsylvania	71 PA. Cons. Stat. § 194 (2002) (Adm. Code § 514): Municipalities may not grant easements or rights-of-way without the express authority from the General Assembly. However, municipalities may grant licenses to public service companies to construct lines if those lines will give State buildings better service, or if such line is necessary to serve the public.	72 PA. Cons. Stat. § 6164 (2002): If a fee dispute is heard in court, the court will determine the license fee necessary to compensate the municipality for its services performed in regulating the license, and the amount determined will be the maximum amount charged to the licensee.					

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	71 PA. Cons. Stat. § 194 (2002): (Adm. Code § 514): Licenses are revocable for cause, as long as the licensee is provided with at least six months notice.	71 PA. Cons. Stat. § 194 (2002): (Adm. Code § 514): Licenses shall provide the amount of compensation due to the Commonwealth for the use of its property.					
Rhode Island	<p>R.I. Gen Laws § 39-17-1 (2002): Municipalities are granted franchising authority to regulate access to ROW.</p> <p>R.I. Gen Laws § 39-17-7 (2002): Providers are subject to reasonable rules and regulations and orders, controlling the extent and quality of construction and service to be maintained by the corporation and prescribing the location and arrangement of its tracks, poles, wires or conduits and their appurtenances enacted by local governments.</p>	<p>R.I. Gen Laws § 39-17-3 (2002): Franchise holders must pay franchise tax up to 3% of gross earnings in that locality, on a quarterly basis.</p> <p>R.I. Gen Laws § 39-17-8 (2002): Cities and towns may not charge for use of streets, except as provided through the franchise tax authorization.</p>			R.I. Gen Laws § 39-17-7 (2002): Providers may, within 30 days of the municipality's decision, appeal to the Division of Public Utilities and Carriers, if they feel local regulations are unreasonable.		

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	<p>R.I. Gen. Laws § 37-7-8 (2002): "Grant of easements and rights of way over acquired lands. Whenever, in the opinion of the acquiring authority, an easement or right of way may be granted in land owned or held by the state without thereby jeopardizing the interests of the state, and the granting of the easement or right of way will be for the public good, the acquiring authority, with the approval of the state properties committee, is hereby authorized and empowered to grant the easement or right of way by proper instrument, approved as to substance by the director of administration and as to form by the attorney general, for such consideration, and in such manner and upon such terms and conditions as may, in the judgment of the state purchasing agent, be most advantageous to the public interest."</p> <p>R.I. Gen. Laws § 34-7-5 (2002). "Utility rights-of-way not acquired by enjoyment. No enjoyment by any persons, companies or corporations, for any length of time, of the privilege of maintaining telegraph, telephone, electric, or other posts, wires or apparatus in, upon or over any lands or buildings of other persons or corporations, shall thereby confer any right to the continued enjoyment of the easement or raise any presumption of a grant thereof."</p>						

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
<p>South Carolina</p>	<p>S.C. Code Ann. § 58-9-2240. A municipality may not use its authority to regulate rights-of-way as a means to impose additional regulations on telecommunications companies or public utilities.</p> <hr/> <p>S.C. Code Ann. § 58-12-10 (2002): Public cable companies may place their cables anywhere on state lands, roads, or navigable waters, provided that the cable company contracts with the telephone company or electric utility to attach on their pre-existing poles or in their tunnels. Any cable installation shall not interfere with the use of lands, roads, or waters.</p> <hr/> <p>S.C. Code Ann. § 58-12-10 (2002): Before a cable company may place its lines, it must get permission from the agency in charge of the lands, roads, and public waters. If the cable must traverse public lands, the cable company must get permission from the public landowner.</p>	<p>S.C. Code Ann. § 58-9-2220 (2002). South Carolina authorizes municipalities to implement a two-tiered tax system. (A). A business license tax of up to 0.75% of retail telecommunications gross income. A franchise or consent fee for the installation or construction of physical facilities in public rights-of-ways. The maximum permissible fee is based on municipal population and ranges from \$100 for a population of 1,000 or less to \$1,000 for a population of more than 25,000.</p>		<p>S.C. Code Ann. § 58-9-2230(B) (2002): A municipality must manage its public rights-of-way on a competitively neutral and nondiscriminatory basis.</p> <hr/> <p>S.C. Code Ann. § 58-9-2230(D) (2002): Mobile telecommunications companies are not deemed to use rights-of-way unless they build physical facilities on public property.</p>			
<p>South Dakota</p>	<p>S.D. Codified Laws § 49-32-1 (2002): Telecommunications companies are granted rights-of-way over public lands and along public roads, subject to control by the proper authorities.</p> <hr/> <p>S.D. Codified Laws § 49-7-22 (2002): Telecommunications companies are granted rights-of-way across public school lands.</p> <hr/> <p>S.D. Codified Laws § 31-26-1 (2002): Localities have franchising authority, but no exclusive franchises may be granted and no franchise may last more than 20 years.</p>						

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	<p>S.D. Codified Laws § 9-35-1 (2002): Municipalities have the right to determine charges for local telephone service, subject to the PUC's powers, and to regulate the placement of telephone poles, lines, and other facilities.</p>						
Tennessee	<p>Tenn. Code Ann. § 65-21-201 (2002): Telecommunications companies or their equivalent are granted rights-of-way along public roads, over public lands, along navigable waters, and on private lands.</p> <p>Tenn. Code Ann. § 65-21-103 (2002): Telecommunications companies do not have the right to contract for exclusive rights to rights-of-way in this state.</p> <p>Tenn. Code Ann. § 6-54-109 (2002): Municipalities have the exclusive right to franchise utilities within their jurisdiction.</p> <p>Tenn. Code Ann. §13-24-303 (2002): Protects authority of locals to exercise reasonable municipal and county police powers.</p>					<p>Tenn. Code Ann. § 65-21-204 (2002): If a telecommunications provider is unsuccessful in contracting for a right-of-way over private land, then the company may condemn the land for its own purpose.</p>	
Texas	<p>Tex. Loc. Gov't. Code Ann. § 283.001 (2002): "(b) It is also the policy of this state that municipalities: (1) retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public;"</p>	<p>Tex. Loc. Gov't. Code Ann. § 283.001 (2002): "(b) It is also the policy of this state that municipalities: (2) receive from certificated telecommunications providers fair and reasonable compensation for the use of a public right-of-way within the municipality."</p>		<p>Tex. Loc. Gov't. Code Ann. § 283.001 (2002): "(c) The purpose of this chapter is to establish a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory;"</p>			

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	<p>Tex. Loc. Gov't. Code Ann. § 282.002 (2002): "General Authority of General-Law Municipality. (a) A general-law municipality has exclusive control over the public grounds of the municipality."</p>	<p>Tex. Loc. Gov't. Code Ann. § 283.051 (2002): "Right-Of-Way Fee. (a) Notwithstanding any other law, a certificated telecommunications provider that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the commission under Section 283.055."</p>		<p>Tex. Loc. Gov't. Code Ann. § 283.002 (2002): This section specifically defines "right-of-way" as excluding airwaves above the streets (so does not include wireless communications.) However, it does not deal with the issue of wireless transmitters.</p>			
	<p>Tex. Loc. Gov't. Code Ann. § 283.052 (2002): Telecommunications companies do not have exclusive rights to rights-of-way.</p>	<p>Tex. Loc. Gov't. Code Ann. § 283.055 (2002): The Texas Public Utilities Commission shall set the per-line rate that a municipality can charge for use of its rights-of-way.</p>					
		<p>Tex. Loc. Gov't. Code Ann. § 283.055 (2002): Municipalities are prohibited from receiving services without compensation or at below market prices.</p>					
<p>Utah</p>	<p>Utah Code Ann. § 54-4-25 (2003): Telecommunications companies and other utilities must obtain certification from the PUC that construction is required before they may begin construction on a right-of-way.</p>	<p>Utah Code Ann. § 72-7-102 (4) (2003): The Highway Authority may require compensation from utilities for use of their rights-of-way, but such compensation may only include those management costs caused by the utilities' activity.</p>				<p>Utah Code Ann. § 78-34-1 (2003): The right of eminent domain is extended to telecommunications companies.</p>	

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	<p>Utah Code Ann. § 72-7-102 (2003): Local highway authorities (county or municipal) may allow excavating, installation of utilities and other facilities or access under rules made by the [local] highway authority[ies] and in compliance with federal, state and local law as applicable.</p>	<p>Utah Code Ann. § 72-7-102 (4) (2003): The Highway Authority's fees must be charged on a competitively neutral basis. If more than one utility is responsible for the management costs incurred, the fees must be allocated to each company or entity proportionately.</p>					
	<p>Utah Code Ann. § 72-7-109 (2003): "Telecommunications Advisory Council. ... (5) The council shall: (a) provide information, suggestions, strategic plans, priorities, and recommendations to assist the department in administering telecommunications access to interstate highway rights-of-way for statewide telecommunications purposes;..."</p>	<p>Utah Code Ann. § 72-7-102 (4)(e) (2003): Providers are entitled to recover ROW access fee costs from their customers.</p>					
	<p>Utah Code Ann. § 72-3-109 (2003): "(1) Except as provided in Subsection (3), the jurisdiction and responsibility of the department and the municipalities for state highways within municipalities is as follows: ... (c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is responsible for construction and maintenance of the right-of-way."</p>						

State	Jurisdiction, Terms of Agreement (except fees)	Compensation	Timelines	Nondiscrimination	Mediation	Condemnation	Remediation & Maintenance
	Utah Code Ann. § 72-5-203 (2003): "(d) A grant of a permanent easement or right of entry across state lands other than sovereign and trust lands shall be made upon a showing to the managing unit of state government that the continued use will provide a public benefit commensurate with the value of the easement and will not unreasonably interfere with the purposes for which the land was obtained or is now held."						
Vermont	VT. Stat. Ann. tit. 19 § 1111(a) (2002): "Permits. -- Permits must be obtained by anyone or any corporation wishing to use as described in this section any part of the highway right-of-way on either the state or town system. Notwithstanding any other statutory requirement, a permit shall be required for any use of any highway right-of-way, consistent with the provisions of this section. The authority given to the board, the secretary and the attorney general under this section shall also apply to the legislative bodies of towns."					Vt. Const., Ch. 1, Art 2d. "That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money."	VT. Stat. Ann. tit. 19 § 1111(c) (2002): Permitted use of the right-of-way. "The permit shall include any conditions imposed by the issuing party.... Failure of any person, corporation or municipality to perform the work or to restore the highways in a satisfactory and timely manner to the agency or the town may result in either the agency or the town completing the work at the expense of the permit holder;..."
	VT. Stat. Ann. tit. 30 § 2513 (2002): Telecommunications companies may construct facilities along railroad tracks, so long as they render reasonable compensation to the railroad owner.						

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	<p>VT. Stat. Ann. tit. 30 § 2502 (2002). "Lines of wires along highways; wireless telecommunications facilities; construction; restriction. Lines of telegraph, telephone and electric wires, as well as two-way wireless telecommunications facilities, may, subject to the provisions of section 1111 of Title 19, be constructed and maintained by a person or corporation upon or under a highway, in such manner as not to interfere with repairs of such highway or the public convenience in traveling upon or using the same."</p>						
<p>Virginia</p>	<p>VA. Code Ann. § 56-458 (2002): Telecommunications companies have the right to build its system along public roads and railroads, or public lands, and along navigable waterways.</p>	<p>VA. Code Ann. § 56-468.1 (2002): In Virginia, the state Department of Transportation annually calculates the Public Rights-of-Way Use Fee as an annual average rate per access line. The average weights public highway miles at \$425 per mile and new installations at \$1 per linear foot.</p>	<p>VA. Code Ann. § 56-458(D)(2002) Transportation Board has 45 days to grant or deny approval for use of right-of-way, and if denied it must provide a written explanation of the reasons the permit was denied and the actions required to cure the denial.</p>	<p>VA. Code Ann. § 56-458(C) (2002): Municipalities and the Commonwealth Transportation Board are prohibited from unreasonably or discriminatorily restricting right-of-way use.</p>			<p>VA. Code Ann. § 56-467 (2002): Utility must restore the right-of-way to a good condition, and if it does not, the municipality may complete the restoration and recover costs from the utility.</p>
	<p>VA. Code Ann. § 56-462 (2002): "A. No incorporated city or town shall grant to any such telegraph or telephone corporation the right to erect its poles, wires, or cables, or to lay its conduits upon or beneath its parks, streets, avenues, or alleys until such company shall have first obtained, in the manner prescribed by the laws of this Commonwealth, the franchise to occupy the same."</p>	<p>VA. Code Ann. § 56-458(E) (2002). In-kind fees prohibited.</p>		<p>Va. Code Ann. § 56-458(B) (2002): Commercial mobile radio services are exempt from paying right-of-way fees.</p>			

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Washington	Wash. Rev. Code § 35.99.020 (2002): "Permits for use of right of way. A city or town may grant, issue, or deny permits for the use of the right of way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services . . . "	Wash. Rev. Code § 35.21.860(1) (2002): Municipalities may charge fees for the use of their rights of way that recover their administrative costs related to the permit process, and a site-specific charge to wireless providers for the placement of new structures in the right-of-way.	Wash. Rev. Code § 35.99.030 (2002): Municipalities must grant or deny a "master permit" (a permit to enter the right of way for the purpose of locating facilities) within 120 days of application, but service providers with statewide grants are not required to apply for master permits.				
	Wash. Rev. Code § 35.99.040 (2002): Municipalities may not use the right-of-way permitting process as a means of regulating service providers, except where permitted by federal law.	Wash. Rev. Code § 35.99.070 (2002): Washington permits cities and towns to obtain access to ducts, conduits, or related structures of a service provider, subject to conditions that include the payment of compensation sufficient to recover the provider's incremental costs. If the municipality allows the in-kind facilities to be used to provide service to the public, it must compensate the provider on the basis of fully allocated costs.	Wash. Rev. Code § 35.99.030 (2002): Municipalities must grant or deny a "use permit" (a permit to enter the right-of-way for installing, repairing, or maintaining facilities) within 30 days of application.				
West Virginia	W.Va. Code § 8-31-1,2 (2002): Municipalities and counties have franchising authority and may impose terms and conditions for those agreements.	W.Va. Code § 17-16A-13 (2002): The Parkways Authority has the power to fix and collect fees for the use of rights-of-way along the state parkways.				W.Va. Code § 54-1-2 (2002): The right of eminent domain is permitted for construction and maintenance of telegraph and telephone lines if for public use.	

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	<p>W.Va. Code § 17-4-8 (2002): Telecommunications companies and other service providers are prohibited from constructing facilities on state roads except under the conditions as may be prescribed by the state road commissioner.</p>						
<p>Wisconsin</p>	<p>Wis. Stat. § 62.14(6)(b) (2002): "(b) Unusual use of streets. No building shall be moved through the streets without a written permit therefore granted by the board of public works, except in cities where the council shall, by ordinance authorize some other officer or officers to issue a permit therefore; said board shall determine the time and manner of using the streets for laying or changing water or gas pipes, or placing and maintaining electric light, telegraph and telephone poles therein; provided, that its decision in this regard may be reviewed by the council."</p> <p>Wis. Stat. § 196.58 (2002): Municipalities may determine whether and on what conditions a public utility may enter and occupy their rights-of-way.</p>					<p>Wis. Stat. § 32.075 (2002): Telecommunications companies may file condemnation proceedings as prescribed herein.</p>	

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	<p>Wis. Stat. § 196.499(14) (2002): "EXTENSION OF FACILITIES. Any telecommunications carrier may extend its facilities into or through any municipality for the furnishing of its services, subject to the reasonable regulation of the governing body of the municipality relative to the location of poles and wires and the preservation of the safe and convenient use of streets and alleys to the public. Upon a petition for relief made by a telecommunications carrier, the commission shall set a hearing and if it finds a contract, ordinance or resolution under this subsection to be unreasonable, the contract, ordinance or resolution shall be void."</p>						
<p>Wyoming</p>	<p>Wyo. Const. Art. 10, § 17 (2002): "Rights of telegraph companies. Any association, corporation or lessee of the franchises thereof organized for the purpose shall have the right to construct and maintain lines of telegraph within this state, and to connect the same with other lines."</p> <p>Wyo. Const. Art. 13, § 4 (2002): "Franchises. No street passenger railway, telegraph, telephone or electric light line shall be constructed within the limits of any municipal corporation without the approval of the council."</p> <p>Wyo. Stat. Ann. § 15-1-103(a)(xi) (2002): Local governments granted authority to take all necessary action to plan, construct, maintain and regulate the use of streets, including the regulation of any structures thereunder.</p>					<p>Wyo. Stat. Ann. § 1-26-701- § 1-26 713 (2002): Landowner has right to compensation if property is taken by eminent domain. The right accrues on date of possession by condemner. Compensation equals the fair market value of the property on the date of valuation, the commencement of the condemnation proceedings.</p>	

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	Wyo. Stat. Ann. §15-1-103 (a)(xxxiii)(A) (2002): Cities may grant franchises to install and maintain necessary facilities under or over any streets, alleys or avenues.						