



**To:** Lancaster Inter-Municipal Committee Members

**From:** Phillip M. Fraga  
Michael D. Roberts

**Subject:** Proposal for Right-of-Way Management Ordinance Services

**Date:** June 9, 2023

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The Cohen Law Group (“CLG”) welcomes this opportunity to present this proposal to assist the interested municipalities in the Lancaster Inter-Municipal Committee (the “LIMC”) with the drafting of a Right-of-Way Management Ordinance (“Ordinance”).

## **Introduction**

The issue of management of utilities and related companies in the public rights-of-way (“ROW”) continues to challenge municipalities in Pennsylvania. While many companies already own facilities in the ROW, many more are looking to locate there.<sup>1</sup> These companies submit requests to install new facilities or expand existing facilities in the ROW. In some cases, they attempt illegally to work in the ROW without obtaining proper permits. Our understanding is that one or more of the LIMC communities experienced such issues with a new company called Brightspeed.

This increase in the number and type of facilities within a cramped area has had a detrimental impact on municipalities. It creates a greater physical burden on the ROW and increases the potential for public safety hazards. It also places an administrative strain on municipalities as they attempt to oversee the installation and maintenance of these facilities, issue permits, perform inspections, require timely repair and restoration, coordinate road changes, and monitor the activities of the companies that manage the facilities and their contractors. As such, municipalities need to take steps to gain greater control over these facilities in the ROW. This can be accomplished through the enactment and implementation of an Ordinance.

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<sup>1</sup> They include, but are not limited to, existing and new telecommunications companies, fiber optic cable companies, wireless fiber companies, gas companies, electric companies, and water companies. Wireless facilities in the ROW, including new poles and new antennas on existing poles, also known as “Small Wireless Facilities”, would not be included in a ROW ordinance because they are more properly regulated through the Zoning Code.

## **Scope of Services**

The following is the scope of services that the Cohen Law Group will perform if engaged to assist the LIMC municipalities in the preparation of a comprehensive Ordinance.

### **1. Preliminary Setting of Priorities**

The first step in this project will be to schedule a virtual meeting with municipal staff and officials to set priorities for right-of-way management. During the meeting, we will discuss current federal and state law and regulations relating to right-of-way management as well as the benefits and suggested substantive provisions to be included in the Ordinance. We will also solicit the concerns and needs of officials regarding practical right-of-way issues for inclusion in the Ordinance.

### **2. Drafting of Proposed Ordinance**

CLG will draft a proposed Ordinance for each participating municipality that is consistent with applicable federal and state law, provides the municipalities with all of the benefits to which they are entitled, and includes the specific concerns of the municipalities. The Ordinance will include, but not be limited to, construction and maintenance standards, permitting requirements, procedures applicable to new entrants into the ROW, initial and recurring fees to the extent permitted by law, and legal protections. The Ordinance will distinguish between ROW occupants that are certificated by the Pennsylvania Public Utility Commission and those that are not, and will impose distinct requirements on each.

CLG will then submit the proposed Ordinance to the appropriate officials at each municipality for review and comment. After such officials have had the opportunity to review and comment on the proposed Ordinance, we will conduct a follow up conference call to discuss the comments and make final decisions on how to address those comments in the final Ordinance. CLG will incorporate suggested changes to the documents and finalize the Ordinance for consideration by the local governing bodies.

### **3. Ordinance Approval Process**

CLG will then work with the staff and officials of each municipality to prepare for the meetings of the local governing bodies in which the Ordinance will be discussed. This may include a conference call or virtual meeting with key staff members and, if requested, drafting talking points summarizing the reasons for the Ordinance and its key components. It is not expected that CLG attorneys will virtually attend or travel to any of the individual approval meetings. If virtual attendance or travel is requested, it would be at the hourly rates described below.

## **Professional Background**

CLG is a law firm that specializes exclusively in representing local governments in cable, wireless, broadband and ROW management issues. For over 25 years, we have guided our clients through these intricate fields. Our attorneys offer technical expertise, depth of experience and a

tireless commitment to help our clients solve complex issues. As technology advances at an accelerated pace, and federal and state regulations change to adapt to those advances, local governments need to stay informed and be prepared for new challenges and new opportunities.

CLG has represented over 500 local governments in several states in cable, wireless, broadband and ROW management matters. We also work closely with the Pennsylvania statewide municipal associations and other local government organizations. CLG's full array of legal services to municipal clients include the following:

- Drafting cable franchise agreements
- Cable franchise renewal negotiations with cable companies
- Franchise fee audits
- Cable compliance reviews
- Drafting wireless facilities ordinances
- Negotiation with cellular tower and antenna companies
- Wireless facility litigation
- Drafting of right-of-way ordinances
- Right-of-way management and enforcement
- Pole attachment negotiations with cable and telephone companies
- Broadband expansion planning and implementation

As an active member of the National Association of Telecommunications Officers and Advisors (NATOA), CLG stays current with changes in telecommunications law. Our attorneys have also written articles on cable franchising, right-of-way, and wireless matters that have appeared in *Public Management Magazine*, *Pennsylvania Township News*, *Pennsylvania Municipal Reporter*, and *Pennsylvania Borough News*. They are also frequent speakers at regional and national municipal conferences.

### **Cost of Services**

We propose to perform these services on a flat fee basis, because our significant experience in performing these projects lends predictability to our efforts on behalf of the LIMC municipalities. In addition, a flat fee provides "price certainty" to the municipalities. We offer our services to the LIMC municipalities at a discounted rate if 5 or more municipalities participate in the project. We offer these discounts because there are certain economies of scale in representing a multi-municipal group.

**Standard Single Municipality Fee = \$4,800**

**5 or More Municipalities: 20% Discount = \$3,840 per Municipality**

The flat fees above include expenses. They also do not include the unlikely possibility of extraordinary services outside the scope of services in this proposal or any significant unforeseeable developments. In the event of such extraordinary developments, CLG will contact the affected municipality(ies) to discuss such developments prior to rendering services related to them. If such services were authorized, CLG would charge a fee of \$300 per hour. As noted

above, it is not expected that CLG attorneys will travel for this project. If travel is requested, travel time will be charged at one-half this rate or \$150 per hour.

Please note that our billing policy is to bill one-half of the fee at the commencement of the project and one-half of the fee at the conclusion of the project. We ask that our bills be paid within 30 days of receipt. If the terms of this engagement are acceptable, please sign this letter and send or email a copy back to me. Thank you for your consideration and we look forward to working with you on this project.

Accepted on Behalf of \_\_\_\_\_

Signature:\_\_\_\_\_

Print:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_