

**CITY OF MARATHON, FLORIDA**

**ORDINANCE NO. 01-03-03**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, REGULATING THE USE OF PUBLIC RIGHTS-OF-WAY FOR COMMUNICATIONS FACILITIES; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION AND PERMIT PROCEDURES; PROVIDING CONDITIONS FOR PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City has determined that it is in the public interest to permit the placement of one or more communications systems or facilities in the public rights-of-way; and

**WHEREAS**, effective January 1, 2001, the State of Florida amended Section 337.401, Florida Statutes (2000), to reflect that, because Federal and State law require the nondiscriminatory treatment of providers of communications services and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat communications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to communications companies placing or maintaining communications facilities in its public rights-of-way must be generally applicable to all communications companies and, notwithstanding any other law, may not require a communications company to apply for or enter into an individual

license, franchise or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its public rights-of-way; and

**WHEREAS**, it is the intent of the City to exercise its authority over communications services providers' placement and maintenance of facilities in the public rights-of-way; and

**WHEREAS**, it is the intent of the City to treat each communications services provider in a nondiscriminatory and competitively neutral manner in exercising such authority; and

**WHEREAS**, the public rights-of-way subject to the jurisdiction and control of the City: (1) are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all residents; (2) are a unique and physically limited resource, and proper management by the City is necessary to maximize efficiency, to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from the placement and maintenance of such communications facilities in the public rights-of-way; and (3) are intended for public uses and must be managed and controlled consistently with that intent; and

**WHEREAS**, it is the intent of the City that this Ordinance shall not apply to providers of cable television service; and

**WHEREAS**, it is the intent of the City to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law.

**IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1:**     **Title.**     This Ordinance shall be known and may be cited as the Marathon Communications Rights-of-Way Use Ordinance.

**Section 2: Intent and Purpose.** It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement and maintenance of Communications Facilities in the Public Rights-of-Way within the City; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, including Section 337.401, Florida Statutes (2000), as it may be amended, the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other Federal and State law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers after the effective date of this Ordinance; and minimizing disruption to the Public Rights-of-Way. In regulating its Public Rights-of-Way, the City shall be governed by and shall comply with all applicable Federal and State laws.

**Section 3: Definitions.**

That for the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this section or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning.

1. "City" shall mean Marathon, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated or enlarged form.

2. "Communications Services" shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Cable service, as defined in Section 202.11(2), Florida Statutes (2000), as it may be amended, is not included in the definition of "Communications Services" and cable service providers or providers of service via an open video system may be subject to other ordinances of the City and shall require separate authorization from the City.

3. "Communications Services Provider" shall mean any Person making available or providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-Way. This shall also include any Person that places or maintains a Communications Facility in Public Rights-of-Way but does not provide Communications Services.

4. "Communications Facility" or "Facility" or "System" shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the Public Rights-of-Way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communications Services.

5. "FCC" shall mean the Federal Communications Commission.

6. "In Public Rights-of-Way" or "in the Public Rights-of-Way" shall mean in, on, over, under or across the Public Rights-of-Way.

7. "Ordinance" shall mean this Ordinance.

8. "Person" shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and but shall not include the City.

9. "Place or maintain" or "placement or maintenance" or "placing or maintaining" shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A Communications Services Provider that owns or exercises physical control over Communications Facilities in Public Rights-of-Way, such as the physical control to maintain and repair, is "placing or maintaining" the Facilities. A party providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way is not placing or maintaining Facilities in the Public Rights-of-Way.

10. "Public Rights-of-Way" shall mean a public right-of-way, public utility easement, highway, street, road, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path or alley or any other property for which the City is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the City holds a property interest therein. "Public Rights-of-Way" shall not include private property. "Public Rights-of-Way" shall not include any real or personal City property except as described above and shall not

include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

11. “Registrant” or “Facility Owner” shall mean a Communications Services Provider or other person that has registered with the City in accordance with the provisions of this Ordinance.

12. “Registration” and “Register” shall mean the process described in this Ordinance whereby a Communications Services Provider provides certain information to the City.

**Section 4: Registration for Placing or Maintaining Communications Facilities in Public Rights-of-Way.**

1. A Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the City shall first Register with the City in accordance with this Ordinance. Subject to the terms and conditions prescribed in this Ordinance, a Registrant may place or maintain a Communications Facility in Public Rights-of-Way. A Communications Services Provider with an existing Communications Facility in the Public Rights-of-Way of the City as of the Effective Date of this Ordinance has sixty (60) days from the Effective Date of this Ordinance to comply with the terms of this Ordinance, including, but not limited to, Registration, or be in violation thereof.

2. A Registration shall not convey any title, equitable or legal, in the Public Rights-of-Way. Registration under this Ordinance governs only the placement or maintenance of Communications Facilities in Public Rights-of-Way. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on the City’s or another Person’s Facilities. Registration

does not excuse a Communications Services Provider from complying with all applicable law, including City ordinances, codes or regulations, including this Ordinance.

3. Each Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the City shall file a single Registration with the City that shall include the following information:

(a) Name of the applicant;

(b) Name, address and telephone number of the applicant's primary contact person in connection with the Registration and of the person to contact in case of an emergency;

(c) For Registrations submitted prior to October 1, 2001, the applicant shall state whether it provides or expects to provide local service or toll service or both;

(d) Evidence of the insurance coverage required under this Ordinance and acknowledgment that Registrant has received and reviewed a copy of this Ordinance, and

(e) A copy of Federal or State Certification authorizing the applicant to provide Communications Services, if any;

(f) If the applicant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or other means; and

(g) A Security Fund in accordance with this Ordinance.

4. The City Manager or designee shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection 3 above, the Registration shall be effective and the City shall notify the applicant of the effectiveness of Registration in writing. If the City determines that the information has not been submitted in

accordance with subsection 3 above, the City shall notify the applicant in writing of the non-effectiveness of Registration, and reasons for the non-effectiveness.

5. A Registrant may cancel a Registration upon written notice to the City that the Registrant will no longer place or maintain any Communications Facilities in Public Rights-of-Way and will no longer need to obtain permits to perform work in the Public Rights-of-Way. A Registrant cannot cancel a Registration if the Registrant continues to place or maintain any Communications Facilities in Public Rights-of-Way.

6. Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a Communications Facility in any particular area in Public Rights-of-Way within the City. Registrations are expressly subject to any future amendment to or replacement of this Ordinance and further subject to any additional City ordinances, as well as any State or Federal laws that may be enacted.

7. A Registrant shall renew its Registration with the City by April 1 of even numbered years in accordance with the Registration requirements in this Ordinance, except that a Registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection 3, except, as of October 1, 2001, subsection 3(c), a Registrant shall provide updated information to the City. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional permits until the Communications Services Provider has complied with the Registration requirements of this Ordinance.

8. In accordance with applicable City ordinances, codes or regulations and this Ordinance, a permit shall be required of a Communications Services Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way. An effective Registration shall be a condition of obtaining a permit. Notwithstanding an effective Registration, permitting

requirements shall continue to apply. A permit may be obtained by or on behalf of a Registrant having an effective Registration if all permitting requirements are met.

9. A Registrant that places or maintains Communications Facilities in the Public Rights-of-Way shall be required to pay compensation to the City as required by applicable law and ordinances of the City. A Registrant that places or maintains Communications Facilities in the Public Rights-of-Way, other than a Registrant that provides local services as defined in Section 203.012(3), Florida Statutes within the City, shall pay to the City the fees required to be paid by providers of toll service within the City.

**Section 5: Placement or Maintenance of a Communications Facility in Public Rights-of-Way.**

1. Registrant agrees at all times to comply with and abide by all applicable provisions of the State statutes and City ordinances, codes and regulations in placing or maintaining a Communications Facility in Public Rights-of-Way.

2. A Registrant shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the City or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in Public Rights-of-Way in the event of an emergency. Registrant acknowledges that as a condition of granting such permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a Communications Facility in Public Rights-of-Way. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the permit. The City may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.

3. As part of any permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way, the Registrant shall provide a proposal for construction of the Communications Facility that sets forth at least the following:

(a) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in Section 471.003, Florida Statutes, identifying the location of the proposed Facility, including a description of the Facilities to be installed, where it is to be located, and the approximate size of Facilities and equipment that will be located in Public Rights-of-Way;

(b) A description of the manner in which the Facility will be installed (i.e. anticipated construction methods and/or techniques);

(c) A traffic maintenance plan for any disruption of the Public Rights-of-Way;

(d) Information on the ability of the Public Rights-of-Way to accommodate the proposed Facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with Facilities in the Public Rights-of-Way);

(e) If appropriate given the Facility proposed, an estimate of the cost of restoration to the Public Rights-of-Way;

(f) The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected; and

(g) Such additional information requested by the City that the City finds reasonably necessary to review the permit application.

4. The City shall have the power to prohibit or limit the placement of new or additional Communications Facilities within the Public Rights-of-Way if there is insufficient space to accommodate all of the requests to place and maintain Facilities in that area of the Public Rights-of-Way, for the protection of existing Facilities in the Public Rights-of-Way or to accommodate City plans for public improvements or projects that the City determines are in the public interest.

5. All Communications Facilities shall be placed and maintained so as not to interfere with the use of the Public Rights-of-Way by the public and so as not to cause interference with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way. The Registrant shall endeavor to install all Communications Facilities underground. The City may require the use of trenchless technology (i.e., directional bore method) for the installation of Facilities in the Public Rights-of-Way as well as joint trenching or the co-location of Facilities in existing conduit. In making such requests, the City shall take into consideration several factors including convenience to the public and other users of Rights-of-Way and the feasibility of such requests. The Registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its Facility within the Public Rights-of-Way. The appropriate City official may issue such rules and regulations concerning the placement or maintenance of a Communications Facility in Public Rights-of-Way as may be consistent with this Ordinance and other applicable law.

6. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Communications Facilities.

7. A Registrant shall, at its own expense, restore the Public Rights-of-Way to at least its original condition before such work in Public Rights-of-Way, subject to the City's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the Registrant fails to make such restoration within thirty (30) calendar days after completion of construction, or such other time as may be reasonably required

by the City, the City may after written notice to the Registrant, perform such restoration using City employees, agents or contractors, and charge all costs of the restoration against the Registrant in accordance with Section 337.402, Florida Statutes (2000), as it may be amended, and require reimbursement within thirty (30) days after the submission of the bill by the City to the Registrant.

8. Removal or relocation at the direction of the City of a Registrant's Communications Facility in Public Rights-of-Way shall be governed by the provisions of Sections 337.403 and 337.404, Florida Statutes (2000), as they may be amended.

9. A permit from the City constitutes authorization to undertake only certain activities on Public Rights-of-Way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way.

10. A Registrant shall maintain its Communications Facility in Public Rights-of-Way in a manner consistent with accepted industry practice and applicable law.

11. In connection with excavation in the Public Rights-of-Way, a Registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes (2000), as it may be amended.

12. Registrant shall place or maintain a Communications Facility in Public Rights-of-Way in compliance with all applicable standards as established by all local, State or Federal law and in conformance with the City ordinances, codes and regulations. Registrant shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

13. In the interest of the public's health, safety and welfare, upon request of the City, a Registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights-of-Way. The City may require a Registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to

minimize disruptions and disturbance in the Public Rights-of-Way. The City may provide a more definite time frame based on specific City construction or maintenance schedules.

14. A Registrant shall not place or maintain its Communications Facilities so as to interfere, displace, damage or destroy any Facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other Person's Facilities lawfully occupying the Public Rights-of-Way of the City.

15. City makes no warranties or representations regarding the fitness, suitability or availability of Public Rights-of-Way for the Registrant's Communications Facilities and any performance of work or costs incurred by Registrant or provision of services shall be at Registrant's sole risk. Nothing in this Ordinance shall affect the City's authority to add, vacate or abandon Public Rights-of-Way and City makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-Way for Communications Facilities.

16. The City shall have the right to make such inspections of Facilities placed or maintained in Public Rights-of-Way as it finds necessary to ensure compliance with this Ordinance. In the event the City determines that a violation exists with respect to Registrant's placement or maintenance of Facilities in the Public Rights-of-Way that is not considered to be an emergency or danger to the public health, safety or welfare, the City will provide Registrant no fewer than three (3) days written notice setting forth the violation and requesting correction.

17. A permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way shall include plans showing the location of the proposed installation of Facilities in the Public Rights-of-Way. If the plans so provided require revision based upon actual installation, the Registrant shall promptly provide revised "as-built" plans upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the Facilities based on the City's Geographical

Database, or other format acceptable to the City. The Registrant shall provide such plans at no cost to the City. The City shall maintain the confidentiality of such plans and any other information provided in accordance with Section 202.195, F.S. (2000), as it may be amended.

18. The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other Facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in Public Rights-of-Way occupied by the Registrant. Registrant may allow City Facilities to be co-located within City's Public Rights-of-Way through the use of a joint trench during Registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between Registrant and City and may be subjected to other City rights-of-way requirements. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the Public Rights-of-Way within the limits of the City and within said limits as same may from time to time be altered.

19. A Registrant shall, on the request of any Person holding a permit issued by the City, temporarily support, protect, raise or lower its Communications Facilities to permit the work authorized by the permit. The expense of such temporary support, protection, raising or lowering of Facilities shall be paid by the Person requesting the same, and the Registrant shall have the authority to require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation. If the City requests the temporary support, protection, raising or lowering of a Facility for a public purpose, the City shall not be charged for the temporary support, protection, raising or lowering of the Facility.

20. A wireless facility that is a portion of a Communications Facility, such as an antenna (“Wireless Facility”) which is attached to a legally maintained vertical structure in the Public Rights-of-Way, such as a light pole or utility pole (“Vertical Structure”), shall be subject to the following criteria:

(a) such Wireless Facilities may not extend above the highest point of the Vertical Structure;

(b) such Wireless Facilities that are attached to a Vertical Structure located in the Public Rights-of-Way shall be flush mounted to the Vertical Structure;

(c) such Wireless Facilities shall not have any type of lighted signal, lights or illuminations, and if such illuminations are required by an applicable federal, state or local rule, regulation or law, the Wireless Facility is not permitted at that location.

(d) such Wireless Facilities shall comply with any applicable Federal Communications Commission Emissions Standards;

(e) the design, construction and installation of such Wireless Facilities shall comply with any applicable local building codes;

(f) no advertising shall be allowed on such Wireless Facilities; and

(g) no accessory equipment and related housing shall be permitted in the Public Rights-of-Way that are used in conjunction with such a Wireless Facility.

21. Vertical structures, such as towers, whose purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the Public Rights-of-Way and this Ordinance shall supercede all applicable zoning and land use laws or regulations inconsistent with this Ordinance.

**Section 6: Suspension of Permits.**

1. Subject to Section 7 below and to providing reasonable notice and an opportunity to cure, the City Manager or designee may suspend a permit issued or deny an application for a subsequent permit to a Registrant for work in the Public Rights-of-Way for one or more of the following:

(a) Failure to satisfy permit conditions, or conditions set forth in this Ordinance or other applicable City ordinances, codes or regulations governing placement or maintenance of Communications Facilities in Public Rights-of-Way, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any Public Rights-of-Way;

(b) Misrepresentation or fraud by Registrant in a Registration or permit application to the City;

(c) Failure to properly renew or ineffectiveness of Registration.

(d) Failure to relocate or to remove Facilities as may be lawfully required by the City.

2. After the suspension or denial of a permit pursuant to this Section, the City shall provide written notice of the reason to the Registrant.

**Section 7: Appeals.**

1. Final, written decisions of the City Manager or designee suspending or denying a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. An appeal must be filed with the City within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The City shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the

Registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

2. Nothing in this Ordinance shall affect or limit the remedies the City has available under applicable law.

**Section 8: Conditional Use of Public Rights-of-Way.**

1. In the event Registrant desires to use its existing Facilities or to construct new Facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of Communications Service, or for providing any other use to existing or potential consumers, a Registrant shall seek such additional and separate authorization from City for such activities as may be required by applicable law.

2. To the extent that any Person or Registrant leases or otherwise uses the Facilities of a Person that is duly registered or otherwise authorized to place or maintain Facilities in the Public Rights-of-Way of the City, such Person or Registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the City's rights, including requiring the removal of such Facilities from the Public Rights-of-Way of the City, regardless of the effect on Registrant's ability to place or maintain its own Communications Facilities in Public Rights-of-Way of the City.

**Section 9: Termination of Registration.**

1. The involuntary termination of a previously effective Registration may only be accomplished by an action of the City Council. The City may declare the Registration terminated and revoke and cancel all privileges granted under that Registration if: (a) a federal or Florida authority suspends, denies, or revokes a Registrant's certification or license to provide Communications Service, (b) the Registrant's placement and maintenance in the Public Rights-

of-Way presents a danger to the general public or other users of the Public Rights-of-Way, or  
(c) the Registrant abandons all of its Communications Facilities in the Public Rights-of-Way.

2. Prior to such termination for any of the reasons set forth in this Section, the City Manager or designee shall notify the Registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the City with respect thereto. The Registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the City Council, to accomplish the same.

3. In the event of a vote by the City Council to terminate the Registration, the Registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the Communications Facilities to another person in accordance with this Ordinance or shall remove or abandon the Facilities and take such steps as are necessary to render every portion of the Facilities remaining in the Public Rights-of-Way of the City safe. If the Registrant has either abandoned its Facilities or chooses to abandon its Facilities, the City may either (a) require the Registrant or the Registrant's bonding company to remove some or all of the Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its condition immediately prior to the removal; (b) the City may require that some or all of the Facilities be removed and the Public Rights-of-Way restored to its such condition at the Registrant's expense, using City employees, agents or contractors, and charge any and all costs to the Registrant and require reimbursement, or (c) utilize or allow other Persons to utilize the Registrant's abandoned Facilities. The obligations of the Registrant hereunder shall survive the termination of a Registration. In the event of a declaration of termination of Registration, this provision does not permit the City to cause the removal of any Facilities that are used to provide another service for which the Registrant holds a valid

certification or license with the governing federal or state agency, where required, and is properly registered with the City, for such certificated service, where required.

**Section 10: Transfer or Control, Sale or Assignment of Assets.**

1. If a Registrant transfers, sells or assigns its Registration or its Facilities in the Public Rights-of-Way, incident to a transfer, sale or assignment of the Registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the City within twenty (20) days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current Registrant, then the transferee, buyer or assignee is not required to re-Register. If the transferee, buyer or assignee is not a current Registrant, then the transferee, buyer or assignee shall Register as provided in Section 4 within sixty (60) days of the transfer, sale or assignment. If permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify the appropriate City officials that the transferee, buyer or assignee is the new applicant.

2. Any mortgage, pledge, lease or other encumbrance on the Communications Facilities shall be subject and subordinate to the rights of the City under this Ordinance and applicable law.

**Section 11: Insurance.**

1. A Registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating in Best's Insurance Guide of A or better or having a rating acceptable to the City. All liability policies shall provide that the City is an additional insured in the endorsement. The required coverages must be evidenced by properly executed Certificates of Insurance forms. The Certificates must be signed by the

authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty (30) days advance written notice by registered or certified mail must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.

2. The limits of coverage of insurance required shall be not less than the following:
  - (a) Worker's Compensation and Employer's Liability Insurance  
Employer's Liability - \$500,000 limit each accident  
\$ 500,000 limit per each employee
  - (b) Comprehensive General Liability  
Bodily injury and property damage - \$ 3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/Completed Operations or Independent Contractors.
  - (c) Business Automobile Liability  
Bodily injury and property damage - \$ 3,000,000 combined single limit each accident

3. Umbrella or Excess Liability. Registrant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability or Employer's Liability. The City shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

4. Self-Insurance. Registrant may satisfy the insurance requirements and conditions of this Section under a self-insurance plan and/or retention. Registrant agrees to notify the City, and/or indicate on the certificate(s) of insurance, when self-insurance is relied upon or when a

self-insured retention exceeds \$100,000. The City reserves the right, but not the obligation, to request and review a copy of the Registrant's most recent annual report or audited financial statement, which the Registrant agrees to furnish for the purpose of determining the Registrant's financial capacity to self-insure.

5. Right to Review. City, by and through its City Manager or designee, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Section. City reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.

6. This Section shall not be construed to affect in any way the City's rights, privileges and immunities as set forth in Section 768.28, Florida Statutes. Insurance under this Section shall run continuously with the presence of the Registrant's Facilities in the public right-of-way and any termination or lapse of such insurance shall be a violation of this Section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the City may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the City's rights-of-way by way of individual license agreements.

**Section 12: Indemnification.**

A Registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its Communications System or Facilities in Public Rights-of-Way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or

proceedings. City agrees to notify the Registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) as consent by the City to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes (2000), as it may be amended.

**Section 13: Construction Bond.**

1. Prior to performing any permitted work in the Public Rights-of-Way a registrant shall establish in the City's favor a construction bond to secure the restoration of the Public Rights-of-Way and to ensure the Registrant's faithful performance of the construction or other work in the Public Rights-of-Way, in accordance with applicable sections of the City Code. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the Security Fund as provided in Section 14.

2. In the event a Registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit and this Ordinance, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

3. No less than twelve (12) months after completion of the construction and satisfaction of all obligations in accordance with the bond, the Registrant may request the City Manager or designee to remove the requirement to continue the construction bond. Notwithstanding, the City may require a new bond for any subsequent work performed in the Public Rights-of-Way.

4. The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that:

“Unless released by the City, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”

5. The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.

**Section 14: Security Fund.**

At the time of registration and as a condition of receiving its first permit to place or maintain a Communications Facility in Public Rights-of-Way after the effective date of this Ordinance, the Registrant shall be required to file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of Fifty Thousand Dollars (\$50,000.00) having as a surety a company qualified to do business in the State of Florida, and acceptable to the City Manager or designee, which shall be referred to as the "Security Fund." The Security Fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon Registrant by the provisions of this

Ordinance. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this Ordinance, subject to Section 15 of this Ordinance, there shall be recoverable, jointly and severally from the Security Fund and/or from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund. The City may in its reasonable discretion accept a corporate guarantee of the Registrant or its parent company.

**Section 15: Enforcement Remedies.**

1. A violation of any provision of this Ordinance shall be subject to the penalties set forth in Chapter 162, Florida Statutes, as may be amended from time to time. Nothing in this Ordinance, however, shall prohibit the City from enforcing its Code by any other means including, but not limited to, a summons, a notice to appear in County Court, an arrest, a civil action for injunctive relief, a stop work order or a or demolition order. The enforcement procedures listed in this Section are cumulative to all others, and shall not be deemed a prerequisite to filing suit at law or equity for the enforcement of any Section of this Ordinance.

2. In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.

3. Failure of the City to enforce any requirements of this Ordinance shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

**Section 16: Reports and Records; Inspections.**

1. A Registrant shall provide the following documents to the City as received or filed:

(a) Upon reasonable request, any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the City to protect its interests under this Ordinance.

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

2. Nothing in this subsection shall affect the remedies Registrant has available under applicable law.

3. In addition, the City may, at its option, and upon reasonable notice to the Registrant, inspect the Facilities in the Public Rights-of-Way to ensure the safety of its residents.

4. The City shall keep any documentation, books and records of the Registrant confidential to the extent required under Florida Statutes.

**Section 17: Force Majeure.**

In the event a Registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Registrant's control, and thus not falling within this Section,

shall include, without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

**Section 18: Reservation of Rights.**

1. The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

2. This Ordinance shall be applicable to all Communications Facilities placed in the Public Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by State and Federal law.

**Section 19: Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 20: Conflicts.** All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 21: Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall become and made a part of the Code of the City of Marathon; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 22: Effective Date.** This Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Council member Johnson, who moved its adoption on first reading. The motion was seconded by Council member Mearns, and upon being put to a vote, the vote was as follows:

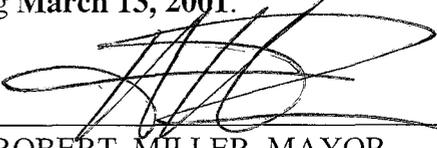
Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>No</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

The foregoing Ordinance was offered by Council member Bartus, who moved its adoption on second reading. The motion was seconded by Council member Greenman, and upon being put to a vote, the vote was as follows:

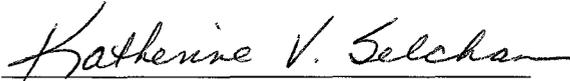
Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

PASSED on first reading on **February 15, 2001.**

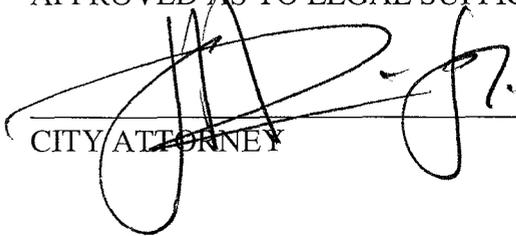
PASSED AND ADOPTED on second reading **March 13, 2001.**

  
\_\_\_\_\_  
ROBERT MILLER, MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
CITY ATTORNEY

592013\ Marathon Communications Rights-of-Way Ordinance