

Fairness and Rights-of-Way Franchise Agreements in Orange Beach

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The case of fiber-optic cabling in public rights-of-way is a complicated subject. A classic problem in fairness is created when an Internet Provider rides the fiber of an existing Franchise holder, subleasing services without municipal oversight (Franchise Agreement).

"Legal is working on negotiating a franchise agreement with Secure Vision and a renewal with Southern Light/Uniti Fiber. Harbor Communications LLC, Camp Fox LLC, and Whitesky Fiber OB LLC have current right-of-way use agreements for fiber with the City," according to an email report from the City Clerk's office in Orange Beach.

"A franchise agreement can also be phrased as a right-of-way use agreement. Businesses who use municipal/publicly owned property, like rights-of-ways or streets, are required to obtain a non-exclusive franchise. If a business is leasing fiber from Uniti [a fiber provider] and doesn't do any physical work on public property, then a franchise is not required and a business license would be sufficient," according to an email report from the City Clerk's office in Orange Beach.

The fairness problem is therefore created by a loophole in municipal policy, allowing subcontractors to sell Internet services through third party fiber providers without municipal oversight. The City Clerk's brilliantly written summations of the policy, and its legal nuance is where we are today.

Mayor Kennon is the rights-of-way referee or fiduciary for Orange Beach, overseeing that all players abide by the rules and have a level playing field. This is how capitalistic competition works best.

"Fiduciaries are people who hold legal obligations of trust, like a trustee of a trust. A trustee must act in the beneficiary's [the city's] best interests," according to a report by George T. Conway III in the Washington Post

(https://www.washingtonpost.com/opinions/george-conway-trump-is-a-cancer-on-the-presidency-congress-should-remove-him/2019/04/18/e75a13d8-6220-11e9-bfad-36a7eb36cb60_story.html?utm_term=.b92d7f549f0a).

Cities can have policies, and enforcement, but some people will always try to circumvent the system. Perhaps having a way to report abuses on the city's web site would be helpful.

"Monetary value is lost to the city. Meaning that Franchise holders must assess a city franchise fee to the customer which is a percentage of gross revenues, non-franchise businesses selling the same services do not assess the fee and therefore the city loses those revenues and also makes them [the non-franchise businesses] more competitive," according to sources familiar with the technology who spoke on the condition of anonymity.

Orange Beach needs a 2030 plan, including fiber to the homes of residents, providing high bandwidth connectivity for businesses, and keeping the cellular companies happy with fiber capacity. Not having a long-term plan makes rights-of-way monitoring impossible.

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Inequities in profit margins motivates sub-contracting vendors, providing services to customers at reduced rates, undercutting the fully-fledged Franchise Holder. This reflects on the city's officials, painting them as slack or inept. The officials are not inept, they are understaffed, having minimal resources. Only Mayor Kennon can fix this staffing issue, because the city is losing money when the rights-of-way are not properly policed.

"Non-franchise companies [at the time of this writing], will connect properties with fiber out of the right of way, so even if they became a franchise holder, they would only be required to pay for the one property connecting to the right of way. This is why new rules need to be established," according to sources familiar with the situation who spoke on the condition of anonymity.

Some will counter that the city should own all the fiber in the rights-of-way and lease it to tenants, but that moment has passed us by, certainly because fiber is very expensive to install, costing from \$5 to \$12 per foot in Orange Beach, and in Mobile it could cost as high as \$15 per foot, making sub-leasing a lucrative way to cut costs.

Fairness is important. The opportunity to correct the issue is at hand with a strong Ordinance limiting cheating, closing the loophole, stopping fiber sub-lesers from selling services in Orange Beach. Every entity using the public rights-of-way shall have a valid Franchise Agreement.

ENDS.

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Disclosure: I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it. I have no business relationship with any company whose stock is mentioned in this article.