12

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
AUG 16 2001
MISCELLANEOUS
& STATE RECORDS

City of Olean, New York

Local Law No. 4-01 of the year 20 01

A local law regarding the construction and construction-related requirements for wireline and broadband telecommunications systems
(Insert Title)

Be it enacted by the Common Council of the
(Name of Legislative Body)

City of Olean as follows:

**Be it enacted by the common council of the city of Olean as follows:**

WHEREAS, the wireline or broadband telecommunications industry is expanding rapidly and is deploying fiber and other facilities at a never-before-seen pace; and

WHEREAS, the majority of the telecommunications facilities use and occupy the public rights-of-way and otherwise have a notable impact on the health, safety and welfare of the community; and

WHEREAS, the type, degree and quality of the construction, maintenance and repair activities of wireline or broadband telecommunications systems and facilities directly impact the health, safety and welfare of the residents of the City and the community as a whole; and

WHEREAS, numerous types of injuries to persons and property can occur when safe construction and construction-related practices are not followed; and

WHEREAS, the City deems it in the pubic interest to protect the public health, safety and welfare of the community through reasonable requirements regulating the construction and maintenance activities of wireline or broadband telecommunications systems;

NOW THEREFORE, the City of Olean, New York Common Council sitting in formal session and following all required procedures hereby enacts a local law entitled "Construction and Construction-Related Requirements for Wireline and Broadband Telecommunications Systems".

**(If additional space is needed, attach pages the same size as this sheet, and number each.)**



DOS-239 (Rev. 11/99)

**Section 1. Construction and Construction-Related Requirements.**

A) Pursuant to Section 253(c) of the Telecommunications Act of 1996, in order to establish minimum and uniform standards related to the safe use and occupancy of the City's property and public rights-of-way and private property, and to protect the safety of the general public, and as the System may be relied upon in the event of an emergency or disaster, to assure the reliable provision of Service in the City and to the extent reasonably possible to assure the ability of Subscribers, Users and property owners to enjoy their property with the least inconvenience and diminishment of the value of the property, a Franchisee shall abide by and adhere to the following minimum construction and construction-related requirements Until the expiration of the franchise in existence as of the effective date of this Local Law, existing facilities shall be Grandfathered with respect to any requirements contained in this Section that are more stringent or demanding than are applicable under the current franchise.

B) Notwithstanding the grandfathering of existing facilities, any construction, rebuild, upgrade or repair occurring after the effective date of this Local Law shall meet the requirements of this Section as follows:

1. construct, install, maintain, and repair the System or facilities used to provide Service in accordance with this Local Law, and any other applicable and related requirements of the State, County and/or City;

2. use and occupy streets and rights-of-ways as set forth in this Local Law, and any other applicable requirements of the State, County, and/or City;

3. where applicable, and when ordered in accordance with this Local Law or a Franchise, remove the Service Provider's or System owner's or operator's equipment, facilities and property from the City's property, streets or public rights-of-way in accordance with this Local Law and applicable State law;

4. when ordered by a private property owner, Subscriber or User, remove the Franchisee's equipment, facilities and property from the premises and restore said property to as close to its condition prior to installation as is reasonably possible;

5. abide by the safety requirements as set forth in this Local Law;

6. abide by and act in strict accordance with all codes and construction practices that are standard and customary to the applicable industry, including construction, fire, safety, health, and zoning codes that are adopted by the City, the County, the State or the United States and as set forth in this Section;

7. cooperate with the City in the conduct of any inspection of the System or facilities used to provide Service, and make repairs or eliminate construction or safety violations as directed or ordered by the Mayor or the Common Council; and

8. maintain all permits, licenses and other authorities as required by any other City rules or regulations, and as may be required by any other governmental regulatory authority

C) The construction, rebuild, upgrade, installation, maintenance and repair activities of any System, or facilities of any System owner or operator or Service Provider, shall at all times and without exception be performed in compliance with the requirements of this Section, unless expressly relieved from compliance in a Franchise, which relief shall include any Grandfathered status in a Franchise in existence as of the Effective Date of this Local Law, but only for work performed prior to thirty (30) days after the effective date of this Local Law. No Grandfathered status shall apply with respect to the requirements of this Section for any work performed later than thirty (30) days after the effective date of this Local Law.

D) For newly served areas of the City, the provisions of this Section shall apply at the time of initial construction and/or installation of the new System or facilities, or at the time of a rebuild or upgrade of a System or any of its facilities.

E) The City expressly adopts a policy of zero ('0') tolerance of situations or practices not in compliance with the requirements of this Section, unless relief is granted in writing.

F) In order to assure the protection of the public health, safety and welfare and of the employees of other occupant of the rights-of-way, it shall be the responsibility of any Franchisee to regularly and diligently inspect its System and take such action, or request others creating or causing a violation of this Section to take such action, as is necessary to assure that the System is in compliance with the requirements of this Section.

G) When engaged in any construction, installation, rebuild, upgrade, maintenance or repair activities, any Franchisee shall treat the aesthetics of property as a priority, shall not substantially change or affect the appearance or the integrity of the structure and the property on which it is situated in a negative manner other than is minimally necessary. This shall include prohibiting the installation of a service drop and associated components on the bias or diagonally across the front, rear or side of a residence or other structure without the property owner's express permission. Unless impracticable, or unless a Subscriber's or owner's permission is obtained in writing, all service drops attached to a dwelling or business shall follow the perimeter lines or roof lines of the dwelling or

business and shall result in the minimum visual effect reasonably possible, taking into account the reasonable desires of the Subscriber or User.

H) To minimize the accidental cutting of lines resulting in a Loss of Service, to the extent not technologically, physically or Commercially Impracticable, all underground service drops shall follow property lines and shall cross the Subscriber's property only at right angles, when requested by the subscriber who shall be notified of this option prior to the installation. The work order signed by the Subscriber or User shall contain a diagram of the permitted routing of the service drop, or unless required due to the physical characteristics of the surface or subsurface obstructions, in which case there shall be a signed and dated acknowledgment by the Subscriber or User of the need to route the installation differently than as required in this subsection. For Systems or Service Providers in existence prior to the effective date of this Local Law, the Franchisee shall not be required to bring its facilities into compliance with the provisions of this subsection until a reasonable period of time after the sooner of an upgrade or rebuild of the System or System facilities or the grant of a new or renewed Franchise. A Franchisee shall always be required to comply with the provisions of this subsection when requested by a Subscriber or User, and shall do so in a timely manner.

I) So as to prevent being cut in the course of performing normal yard maintenance, planting and landscaping, underground service drops shall be buried at a minimum required depth of twelve (12) inches within a reasonable period of time after the sooner of an upgrade or rebuild of the System or System facilities or the grant of a new or renewed Franchise.

J) In instances where previously existing utilities have constructed or installed wire or cable aerially, the Franchisee may construct its System or facilities aerially, unless otherwise required by State or local law. However it shall be the responsibility of the System owner or operator or Service Provider to assure that at all times and without exception all required minimum separations are maintained between its facilities and those of other occupants of the poles as required by the NESC or any other applicable rule or regulation, including as set forth in this Local Law, and that there shall at no time be less than the minimum required clearance between such existing facilities and those of the Franchisee, nor shall there ever be any physical contact between a Service Provider's or System owner's or operator's wires, cable or other equipment and facilities and those of any other utility or Franchisee's facilities or any other occupant of the poles.

K) In situations involving underground construction, the System owner or operator or Service Provider shall at all times and without exception be required to comply with all applicable requirements of the applicable edition of the National Electrical Safety Code and the National Electrical Code.

L) As a matter of economic development and preserving property values, that portion of a System shall be placed underground where utilities are underground. In any area designated by the City where utilities are to be placed underground, any System owner or operator shall also place the System's facilities and components underground. Any new construction in any area designated by the City where utilities are to be placed underground shall be placed underground at the time of the construction.

M) In the event of a violation of any part or subsection of this section is caused by another occupant of the rights-of-way, upon discovery of the violation a Franchisee shall, the same day if possible but in no case later than the next Work Day, formally and in writing notify the party that created or caused the violation and diligently pursue the elimination of the violation. Upon request or by directive of the City, the Franchisee shall promptly provide evidence of the notice or request to eliminate the violation and of diligent efforts to have the violation eliminated.

N) All occupants of utility poles and shared trenches shall at all times cooperate with all other occupants to assure compliance with the requirements of this Section.

O) In order to provide the maximum assurance of the protection of the public and of the employees of any occupants of the City's property and public rights-of-way the City adopts the following construction, maintenance and repair requirements. The requirements in this subsection shall serve as minimum standards and requirements and shall be in addition to any other requirements of the City, the County or the State. In the event of a conflict between the requirements set forth in this subsection and those contained in any other applicable County or State code, rule or regulation, that which provides the greatest assurance of achieving the intent set forth in Subsection (A) of this Section shall apply.

1. All aerial system components shall at all times be securely and properly attached and supported to utility poles so as to protect the structural integrity of the System.

2. All Systems and facilities of a System owner or operator or Service Provider attached to utility poles shall at all times be attached on the same side of the pole as the lowest occupant of the pole, unless sufficient climbing space is provided. At no time shall any facilities of a System owner or operator or Service Provider block or otherwise obstruct or impair the necessary climbing space of the pole.

3. All guy wires associated with a System shall at all times be maintained with the integrity originally intended, including but not limited to

proper attachment to an anchor and adequate tension to perform the purpose intended.

4. Any guy wire associated with a System that is reasonably accessible to or may be reasonably be expected to be encountered by pedestrians or users of recreational vehicles, including but not limited to bicycles, skate boards, off-road vehicles all-terrain vehicles and equestrians, shall at all times be marked and protected by the use of a suitable brightly colored, plainly visible marker no less than eight (8) feet in length and made of a non-conductive material that is resistant to deterioration caused by the effects of the weather.

5. The ends of all guy wires at the point of attachment to the anchor shall be trimmed and capped or otherwise protected so as not to allow exposed sharp ends to protrude.

6. All wires or cables associated with the System that are placed vertically on any pole and that are within eight (8) feet of the surface of the ground shall at all times be protected from direct contact by unauthorized individuals and vandalism by means of a suitable guard made of a non-conductive material that is durable and resistant to degradation or deterioration caused by the effects of the weather.

7. At no time shall any cable or functional equivalent intended for underground installation be left or remain unburied at the end of a Work Day. The sole exception to this requirement shall be for extreme weather conditions or in a force majeure situation, or if the ground is frozen to a depth of more than six (6) inches. In any case involving the exceptions under this paragraph, the unburied cable shall be buried pursuant to the requirements in the National Electrical Safety Code, or for situations involving service drops the requirement in this Local Law on the first Work Day following the cessation or elimination of the condition permitting the exception.

8. To prevent vandalism or injury to the public all pedestals and vaults housing System or Service facilities or components shall at all times be reasonably secured from access by unauthorized individuals. Every Service call at a location at which a pedestal or vault exists shall include a check of the structural integrity and the security of the vault or pedestal, and any repairs necessary to bring the pedestal or vault into compliance with this subparagraph shall be done at the time of the Service call, or the next Work Day at the latest.

9. At no time shall any pedestal or vault be located closer than six (6) feet from an electric power enclosure (or cabinet), unless bonded to the ground of the electric power. enclosure (or cabinet),

10. In no instance shall any pedestal or vault be situated so as to block, prevent, hinder or interfere with the free access to any other utility or Service pedestal.

11. All System or Service facilities or components which are aerially constructed shall as a general rule maintain a minimum of forty (40) inches of vertical clearance at a pole and thirty (30) inches of vertical clearance at mid-span from any electrical secondary power lines, wires or facilities, unless otherwise permitted under the NESC.

12. At all times in all aerially constructed areas of the City, all Communications Systems or Service facilities or components shall maintain a minimum of twelve (12) inches clearance from any other Communications System's lines, wires and facilities, unless the written permission of the affected System owner is obtained.

13. At no time shall any System or Service facilities or components be attached to or in contact with any electrical power service weatherhead mast or any other electrical power-related facility above the roof on any residence or business.

14. All service drops shall be bonded to the electrical system ground serving that home or building so as establish a common ground. At no time shall a separate ground rod be the only means of providing a ground, unless the home or building has no electrical service ground, in which case as a temporary measure a functional ground rod with appropriate ground wire shall be permitted until the electric service is grounded, and promptly thereafter the Facility must be bonded the to electrical system ground. The electric company must be promptly notified in writing of the lack of a ground.

15. No service drop with metallic electric conductors may at any time be grounded to or in contact with any facility providing gas service.

16. All System or Service lines, wires and cable, including Service drops, shall have a minimum vertical clearance of eight (8) feet when passing above or over any point of any roof of any home or building intended for occupancy.

17. No wire, line or cable of a Franchisee, whether aerial or underground, shall cross the property of a Person, Subscriber or User to provide service other than to serve the address of the property being crossed without the express written permission of the owner of the property being crossed, which written permission shall be permanently retained by the Franchisee and produced upon request or demand by the owner

of the property or the Common Council or Mayor. The sole exception to this requirement shall be for distribution facilities located in an easement dedicated or granted for compatible use.

18. All System or Service lines, wires and cable serving residences or other buildings shall be securely attached to the structure in a neat manner and in the least visually offensive manner reasonably possible given the facts and circumstances.

19. No Service drop shall at any time cross in front of or block any door, window or any means of emergency egress or ingress of any home, business or building. If any wire, line, cable or Service drop of the System or Service Provider is found to be blocking a means of emergency ingress or egress, a Franchisee shall immediately reroute and attach the wire, line, cable or Service drop so as to eliminate the situation.

20. All work on the System or Service plant, facilities or equipment performed by a System owner or operator or Service Provider shall be left in a permanent, finished condition at the end of each working day. Notwithstanding the preceding, for work on private property such unfinished work may be permitted if approved by the Subscriber or property owner, and by the Common Council or the Mayor for work in the rights-of-way on an individual location-by-location basis. In the case of on-going work, at no time may materials or System components be left in the rights-of-way within-reach of an individual, unless appropriate personnel are present.

21. All Service drops shall be inspected by the System owner or operator or Service Provider as an integral part of every Service call, installation or reconnection, and any work necessary to bring the Service drop into compliance with this section shall be completed prior to leaving the address, or at the latest by the end of that Work Day.

22. All System or Service lines, wires, cable and facilities shall be constructed so as to leave sufficient room between its System and facilities and those of any communications system so as to enable reasonably free and unhampered work on either system or its components.

23. No service drop shall at any time block or hinder access to any electric power service facility or to any other utility service facility, such as the electric power disconnect switch, the electric power pedestal or the gas shut-off control.

24. Construction and installations shall be in conformance with the plans and conditions approved by the Mayor or an appropriate designee.

25. All street crossings shall be made by means of boring beneath the street, unless expressly granted relief by the Mayor and done in compliance with any permitting requirements of the City.

26. To assure straight seams, asphalt and concrete or cement shall be removed to the nearest existing joint or cut with a saw.

27. A Franchisee shall unconditionally warrant all work related to filling or backfilling trenches for one (1) year from the date of completion of each trench, a record of which date shall be retained for a minimum of three (3) years.

28. All underground construction in the public rights-of-way shall be placed in conduit, unless expressly granted relief by the Mayor.

29. All construction on State-owned streets and roads shall comply with all applicable State rules and regulations.

30. Within ten (10) days of written notice by the City, a Franchisee shall replace or adjust facilities that create a visual eyesore or are not deemed structurally sound or reliable.

31. All underground non-metallic cable (fiber optio) shall be installed with a metal tape or functional equivalent to permit location of the underground facilities from above ground.

32. If marked, the route of any portion of a System installed underground shall be done with markers that are flush with the ground level.

33. Any new poles erected shall require the permission of the City prior to installation.

34. All power supplies mounted aerially on poles shall be located no lower than eight feet (8') above ground.

P) Every Franchisee shall be required to conduct a diligent program of regular inspection of its System and facilities to assure compliance with the requirements of this Section, which shall require adequate training of all field personnel to enable them to be capable of identifying and reporting situations not in compliance with the requirements of this Section.

Q) At all times and without exception all applicable portions of the Occupational Safety and Health Act (OSHA) shall be complied with.

R) Any System owner or operator or Service Provider who violates the standards and requirements of this section may be subject to the penalties as set forth in this Local Law, and other sanctions as may be permissible.

S) For violations of the standards and requirements under this Section occurring during or as a result of any construction, rebuild, upgrade or installation activity, the City's Code Enforcement Officer may issue a Stop Work Order which shall be effective until such time as the violations identified on the Stop Work Order can be determined or verified by an inspection to have been eliminated. The Stop Work Order shall state with specificity the type(s) of violation(s) and the location if the location is reasonably able to be identified, as opposed to a situation that evidence reasonably indicates is endemic throughout the System in the City. As an alternative to an inspection the City, at its discretion, may accept a sworn and attested affidavit from an officer of the company stating that all violations as identified on the Stop Work Order have been eliminated, or for those situations requiring work by third parties that appropriate requests have been made of the third party(s) for the work necessary to eliminate the violation. The City may require the company to reimburse the City for all costs necessitated by the enforcement of the Stop Work Order.

T) Violations of this Section shall be deemed misdemeanors. In the event identified violations remain uncured after providing the required notice and opportunity to cure, the City reserves all rights necessary to pursue violations of this subsection as permitted under applicable State law.

**§2.** This local law shall be effective immediately.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. ..... of 20..... of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ..... 20...., in accordance with the applicable provisions of law.
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**

I hereby certify that the local law annexed hereto, designated as local law No. ....4-01..... of 20...01 of the ([redacted])(City)([redacted]) of .....Olean, New York..... was duly passed by the .Common Council..... on ....7/24..... 20 .01, and was (approved)([redacted])([redacted]
*(Name of Legislative Body)*

[redacted]) by the ..James P. Griffin, Mayor..... and was deemed duly adopted on ....8/14..... 20.01, in accordance with the applicable provisions of law.
*(Elective Chief Executive Officer*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. ..... of 20..... of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ..... 20...., and was (approved)(not approved)(repassed after disapproval) by the ..... on ..... 20.... . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on ..... 20.... , in accordance with the applicable provisions of law.
*(Name of Legislative Body)*
*(Elective Chief Executive Officer*)*

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. ..... of 20..... of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ..... 20...., and was (approved)(not approved)(repassed after disapproval) by the ..... on ..... 20 .... . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of ..... 20.... , in accordance with the applicable provisions of law.
*(Name of Legislative Body)*
*(Elective Chief Executive Officer*)*

*** Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

.5. **(City local law concerning Charter revision proposed by petitio. .)**

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 20------ of the City of ---------- having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on---------- 20----, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 20------ of the County of ---------- State of New York, having been submitted to the electors at the General Election of November ---------- 20----, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph----------, above.

Michael Cleola

Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

*(Seal)*

Date: August 14, 2001

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK
COUNTY OF CATTARAUGUS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

M. Mark Fowler

Signature

City Attorney

Title

[redacted]
City of Olean
[redacted]

Date: August 14, 2001