

Resolution No. 41-98

A resolution to support court proceedings
to protect a City's right to maintain the use and control of rights of way
within its corporate limits

WHEREAS, The Federal Telecommunications Act of 1996 ("the ACT") preserves the right of municipalities to manage rights-of-way within their corporate limits and receive compensation for use and management of the rights-of-way, so long as the regulation of the rights-of-way is nondiscriminatory; and

WHEREAS, The Iowa State Supreme Court has established the "Rule of 1897" whereby a phone company ("1897 company"), including its successors, that was providing local phone service to a community prior to October 1, 1897, does not have to seek permission to use the rights-of-way nor pay any fee for their use; and

WHEREAS, the 1998 legislature passed Senate File 2368: an act relating to the management of public rights of way by local government units, eliminating the power of cities to grant franchises to erect, maintain, and operate plants and systems for telecommunications services within the city; and

WHEREAS, US West has filed suit against the City of Coralville which challenges the status of Coralville's Right of Way Ordinance on the grounds that it violates the Federal Telecommunications Act of 1996; that the requirements of the ordinance are preempted by state law; and that the ordinance is inconsistent with US West's perpetual franchise rights ("Rule of 1897"); and

WHEREAS, In order to best meet the needs of citizens to receive telecommunication and other essential services, it is necessary that cities be able to regulate the use of their rights of way and to receive payment from the users of the rights-of-way for their use; and

WHEREAS, The Iowa League of Cities has established a fund for the purpose of supporting an action to protect the rights of Iowa cities in their rights-of-way; and

WHEREAS, The City of Buffalo agrees that it supports such court action and will provide funding for the proceeding;

NOW THEREFORE, be it resolved that the City of Buffalo agrees that it supports such court action and will pay the sum of \$150.00 as its per capita share of the cost of filing the initial action.

BE IT FURTHER RESOLVED, that the City of Buffalo hereby authorizes the Iowa League of Cities to retain counsel and to coordinate and otherwise manage the litigation.

Approved and adopted this 7 day of December, 1998
Signed by the Mayor of Buffalo, IA, this 07 day of December, 1998.

Signed: Betty O. Walters
Betty O. Walters, Mayor, Buffalo, IA

Attest: Carol A. Bernauer
Carol A. Bernauer, City Clerk,
Buffalo, IA