

K2 Tower at La Bajada Hill on I-25

Write a description for your map.



2022 HB10 Requirements impacting the NMDOT

AN ACT

RELATING TO BROADBAND; ENACTING THE CONNECT NEW MEXICO ACT;

CREATING THE CONNECT NEW MEXICO COUNCIL;

ESTABLISHING DUTIES;

ESTABLISHING THE CONNECT NEW MEXICO COUNCIL AS A COORDINATOR OF STATE BROADBAND PROGRAMS WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY OR A STATE ...

SECTION 3: COUNCIL CREATED--POWERS.--

A. The "connect New Mexico council" is created and administratively attached to the department.

B. The council is composed of the following fifteen members:

(1) the secretary of transportation or the secretary's designee; ...

SECTION 4. COUNCIL--DUTIES.--The council shall:

A. in consultation with the department, coordinate state agency broadband programs and broadband projects in accordance with the statewide broadband plan;

B. evaluate and prioritize grant proposals and make grant awards from the connect New Mexico fund; and

SECTION 5. BROADBAND KNOWLEDGE AND DIGITAL EQUITY ANALYSIS AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND PLAN.--

A. The council shall consult local and tribal governments, public educational institutions and state agencies to develop a digital equity analysis and plan to address:

SECTION 6. CONNECT NEW MEXICO FUND CREATED, (C) When approving grants from the connect New

Mexico fund, the council shall give consideration to: (8) the extent to which the project leverages in-kind or financial support from local agencies or entities, federal assistance funding or federal Coronavirus Aid, Relief, and Economic Security Act, federal Consolidated Appropriations Act, 2021 or federal American Rescue Plan Act of 2021 funding.

SECTION 7. DATA COLLECTION--ANNUAL REPORT. (B) The report shall contain the following information:

(2) progress achieved on implementation of the statewide broadband plan;

(3) identified obstacles to an integrated system of permits, licenses and rules for broadband

infrastructure across the state, including an expedited review process for rights of way use applications;

2022 SB 93 Requirements impacting the NMDOT

AN ACT

RELATING TO BROADBAND;

ENACTING THE BROADBAND ACCESS AND EXPANSION ACT;

ESTABLISHING THE OFFICE OF BROADBAND ACCESS AND EXPANSION;

PROVIDING POWERS AND DUTIES.

SECTION 3, C, (3) create and maintain a repository for broadband data and information in New Mexico on a county-by-county basis, including:

(a) the number of homes and businesses that do not have access to broadband service;

(b) the number of homes and businesses that have broadband service that falls below the quality of

service standards established by the broadband office; and

(c) the locations of broadband infrastructure currently owned or projected for construction

by the state or local governments on a county-by-county basis.

SECTION 4,

B. The broadband office may be the applicant for such funding assistance for all state agencies except the department of transportation.

C. State agencies and public educational institutions shall coordinate with the broadband office

concerning the purchase of broadband infrastructure and services with the goal of obtaining best-value or bulk pricing agreements where practicable.

D. The broadband office shall coordinate with and may enter into memoranda of understanding with federal, local government, state and

tribal government agencies to create an integrated system of permits, licenses and rules for broadband infrastructure across all governmental jurisdictions within

each region of the state, including the creation of a centralized repository, and an expedited review process for rights of way use applications, with the goal of creating uniform coordinated permitting and licensing requirements statewide.

NM Constitution, Article IX, Section 14 (Anti-donation Clause)

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation ... except as provided in Subsections A through G of this section.

A. Care and maintenance of sick and indigent persons ...

B. Establishing a veterans' scholarship program for Vietnam conflict ...

C. Establish by law a program of loans to students of the healing arts ...

D. Creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation ...

E. and F. Nothing in this section prohibits the state, ... [being] designated ... as the state's housing authority,

(1) donating ... costs of land for the construction on it of affordable housing ...

(2) donating ... costs of construction or renovation of affordable housing ...

(3) providing or paying the costs of financing or infrastructure ...

G. Nothing in this section prohibits the state from establishing a veterans' scholarship program, for military war veterans who are post-secondary students at educational institutions under the exclusive control of the state ...

H. Proposed new Exception, on the November 2022 General Election Ballot: Allowing for Household Services, dependent upon general implementing legislation.

New Constitutional exception to the Anti-Donation Clause, Article IX,
Section 14.

H. Nothing in this section prohibits the state from expending state funds or resources for the purpose of providing essential services primarily for residential purposes if the assistance is granted pursuant to general implementing legislation approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall provide for accessibility to essential services primarily for residential purposes and include safeguards to protect public money and other public resources used for the purposes authorized in this subsection. As used in this subsection, "essential services" means infrastructure that allows internet, energy, water, wastewater or other similar services as provided by law."

Two concerns, what does "primarily for residential purposes" mean, and what does "other similar services" mean?

17.4.2. NMAC, REQUIREMENTS FOR OCCUPANCY OF STATE HIGHWAY SYSTEM RIGHT-OF- WAY BY UTILITY FACILITIES

17.4.2.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, (505) 827-5357,

[11/15/96; Recompiled 12/31/01]

17.4.2.2 SCOPE: This utility accommodation policy shall apply to all publicly, privately, cooperatively, municipally or governmentally owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

A. This utility accommodation policy is provided for the regulation of the location, design and methods for installing, adjusting or relocating, accommodating and maintaining physical utility facilities on highway rights-of-way.

B. Where laws or orders of public authority or industry codes prescribe a higher degree of protection or construction than provided by this utility accommodation policy, such laws, orders or codes shall prevail.

[3/10/71, 11/15/96; Recompiled 12/31/01]

17.4.2.3 STATUTORY AUTHORITY: [NMSA 1978, Sections 62-1-2, 67-3-12, 67-8-15, 67-8-1, 67-8-17, 67-8-18, 67-8-19, 67-8-20, 67-8-21, 67-8-22.](#)

[3/10/71, 11/15/96; Recompiled 12/31/01]

17.4.2.4 DURATION: Permanent.

[3/10/71, 11/15/96; Recompiled 12/31/01]

17.4.2.5 EFFECTIVE DATE: November 15, 1996, unless a later date is cited at the end of a Section or Paragraph.

[11/15/96; Recompiled 12/31/01]

17.4.2.6 OBJECTIVE: To prescribe conditions under which utility facilities may be accommodated on all public highway right-of-way under the jurisdiction of the New Mexico State Highway and Transportation Department improved by State or Federal funds and to set forth the regulations covering the relocation of utility facilities in conflict with the construction of highways. The principle objectives of these regulations are to achieve maximum public use of such right-of-way, consistent with the laws of New Mexico and to insure that utility relocations on highway construction projects are accomplished in accordance with New Mexico Statutes, Regulations and Federal Codes. These regulations shall also provide for maximum public safety, maintenance of the roadways, and should minimize future conflicts between the public highway systems of New Mexico and utilities serving the general public in this State.

THE CHALLENGE

Draft a Rule to regulate private enterprise use of public Right-of-Way that complies with the New Mexico State Constitution, the Federal Highway Administration (FHWA) Laws and Rules, the Federal Communications Commission (FCC) Laws and Rules, New Mexico State Laws and Rules, and precedent case law and common law.

DRAFT

TITLE 17 PUBLIC UTILITIES AND FACILITIES SERVICES

CHAPTER 4 FACILITIES RIGHTS-OF-WAY

PART 2 REQUIREMENTS FOR USE and OCCUPANCY OF DEPARTMENT OF TRANSPORTATION PROPERTY and RIGHT-OF-WAY

17.4.2.1 **ISSUING AGENCY:** New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, (505) 827-5357.

[17.4.2.1 NMAC - Rp, 17 NMAC 4.2.1, xx/xx/20xx]

17.4.2.2 **SCOPE:** This facilities accommodation policy shall apply to all publicly, privately, cooperatively, municipally, tribally, or governmentally-owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, data transmission, computer networking, wireless broadband and other fiber optic uses, water, gas, oil, petroleum products, surface (water, brine, and produced water) fast lines, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets, or other property under the jurisdiction of the New Mexico department of transportation.

A. This facilities accommodation policy is provided for the regulation of the location, design and methods for installing, adjusting or relocating, accommodating and maintaining physical facilities on highway rights-of-way or department-owned property.

B. Where industry codes prescribe a higher degree of protection or construction for the traveling public and the department than provided for in this accommodation policy, such codes shall prevail. All facility construction and maintenance methods used within the highway right-of-way shall be performed in accordance with the current edition of the Standard Specifications for Highway and Bridge Construction, the Broadband Infrastructure Manual, and the provisions of this regulation. If there is a conflict between this regulation and the Standard Specifications for Highway and Bridge Construction, or the Broadband Infrastructure Manual, the more stringent shall prevail.

[17.4.2.2 NMAC - Rp, 17 NMAC 4.2.2, xx/xx/20xx]

17.4.2.3 **STATUTORY AUTHORITY:** Sections 62-1-2, 67-3-12, 67-8-15, 67-8-1, 67-8-17, 67-8-18, 67-8-19, 67-8-20, 67-8-21, 67-8-22 NMSA 1978.

FHWA Federal Highway Administration Law, 23 USCS § 109

§ 109. Standards

(a) In general. The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

- (1)** adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and
- (2)** be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the **Interstate System** shall be those approved by the Secretary in cooperation with the State transportation departments.

...

(l)

(1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall—

(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and

(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility.

(2) For the purpose of this subsection—

(A) the term “utility facility” means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; and

(B) the term “right-of-way” means any real property, or interest therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway.

(m) Protection of nonmotorized transportation traffic. ...

FHWA Federal Highway Administration Law, 23 USCS § 111

§ 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) In general. All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

23 CFR 710.403 [Property] Management

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(2) Use by public utilities in accordance with 23 CFR part 645.

23 CFR 710.405 ROW use agreements.

(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with § 710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in § 710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

FCC Federal Communications Commission Law, 47 USCS § 332

§ 332. Mobile services

(a) Factors which Commission must consider. In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act [[47 USCS § 151](#)], whether such actions will—

- (1)** promote the safety of life and property;
- (2)** improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;
- (3)** encourage competition and provide services to the largest feasible number of users; or
- (4)** increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees. ...

(c) Regulatory treatment of mobile services.

- (1)** Common carrier treatment of commercial mobile services.
- (2)** Non-common carrier treatment of private mobile services.
- (3)** State preemption.

(A) Notwithstanding sections 2(b) and 221(b) [[47 USCS §§ 152\(b\)](#) and [221\(b\)](#)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. ...

- (4)** Regulatory treatment of communications satellite corporation
- (5)** Space segment capacity.
- (6)** Foreign ownership.
- (7)** Preservation of local zoning authority.

(A) General authority. Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations.

- (i)** The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

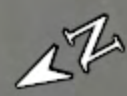
(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

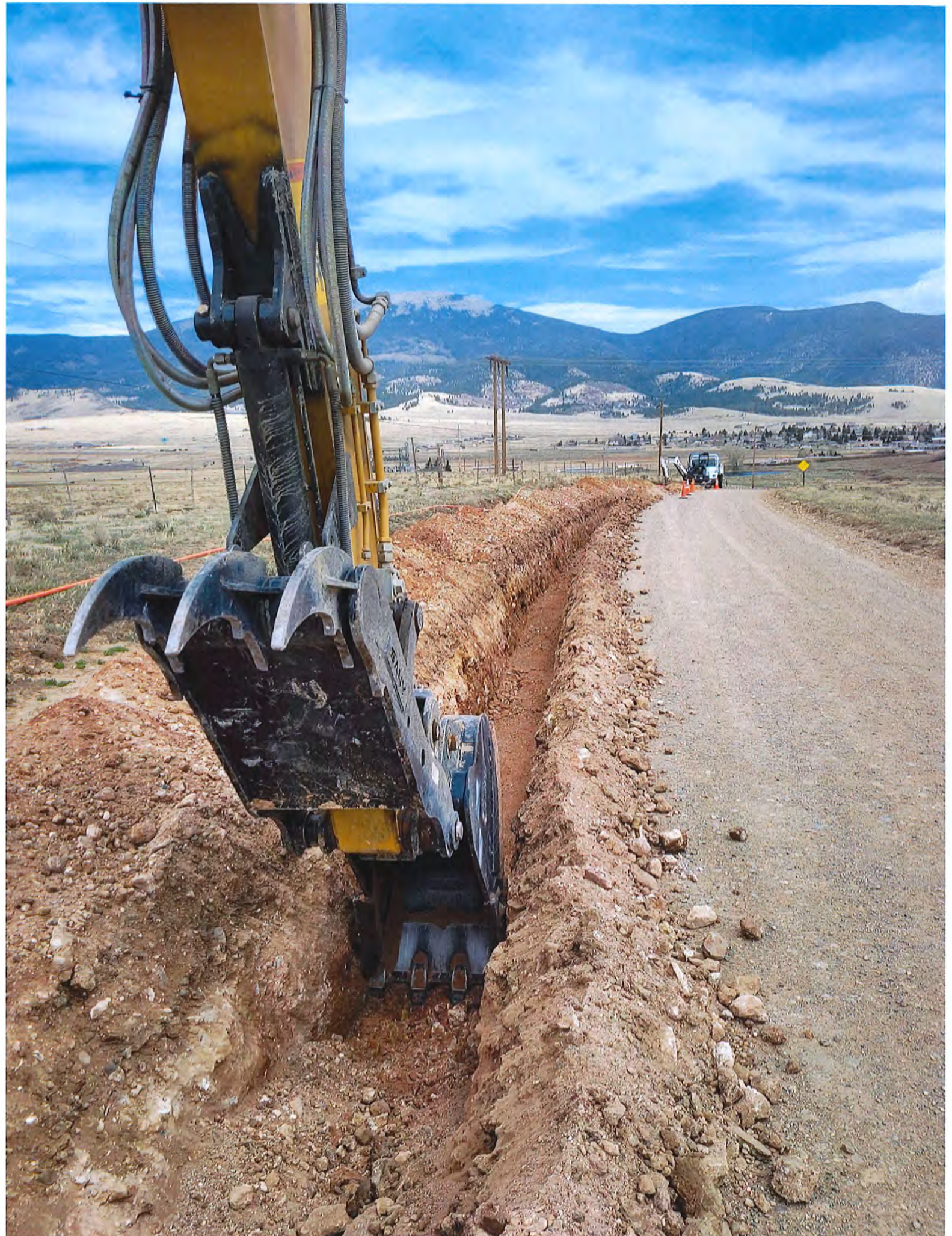
(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

NM 528, Rio Rancho

Write a description for your map.









[FCC Federal Communications Commission, 47 USCS § 253](#)

§ 253. Removal of barriers to entry

(a) In general. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [[47 USCS § 254](#)], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers. Nothing in this section shall affect the application of section 332(c)(3) [[47 USCS § 332\(c\)\(3\)](#)] to commercial mobile service providers.

(f) Rural markets. It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) [[47 USCS § 214\(e\)\(1\)](#)] for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) [[47 USCS § 251\(c\)\(4\)](#)] that effectively prevents a competitor from meeting the requirements of section 214(e)(1) [[47 USCS § 214\(e\)\(1\)](#)]; and

(2) to a provider of commercial mobile services.

Federal Communications Commission FCC 18-133

Before the Federal Communications Commission

Washington, D.C. 20554

In the Matter of Accelerating Wireless Broadband Deployment by
Removing Barriers to Infrastructure Investment Accelerating
Wireline Broadband Deployment by Removing Barriers to
Infrastructure Investment

WT Docket No. 17-79, WC Docket No. 17-84

**DECLARATORY RULING AND THIRD REPORT AND
ORDER**

Adopted: September 26, 2018 Released: September 27, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly
and Carr issuing separate statements;

Commissioner Rosenworcel approving in part, dissenting in part
and issuing a statement.

79. Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.²³³

[FCC Federal Communications Commission Law, 47 USCS § 224](#)

§ 224. Pole attachments

(a) Definitions. As used in this section:

(1) The term “utility” means any person who is a **local exchange carrier** or an electric, gas, water, steam, or other **public utility**, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term “Federal Government” means the Government of the United States or any agency or instrumentality thereof.

(3) The term “State” means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term “pole attachment” means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or **right-of-way** owned or controlled by a utility.

(5) For purposes of this section, the term “telecommunications carrier” (as defined in section 3 of this Act [[47 USCS § 153\(49\)](#)] **does not include any incumbent local exchange** carrier as defined in section 251(h) [[47 USCS § 251\(h\)](#)]).

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations.

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of title III of the Communications Act of 1934 [[47 USCS § 312\(b\)](#)], as amended.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation.

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

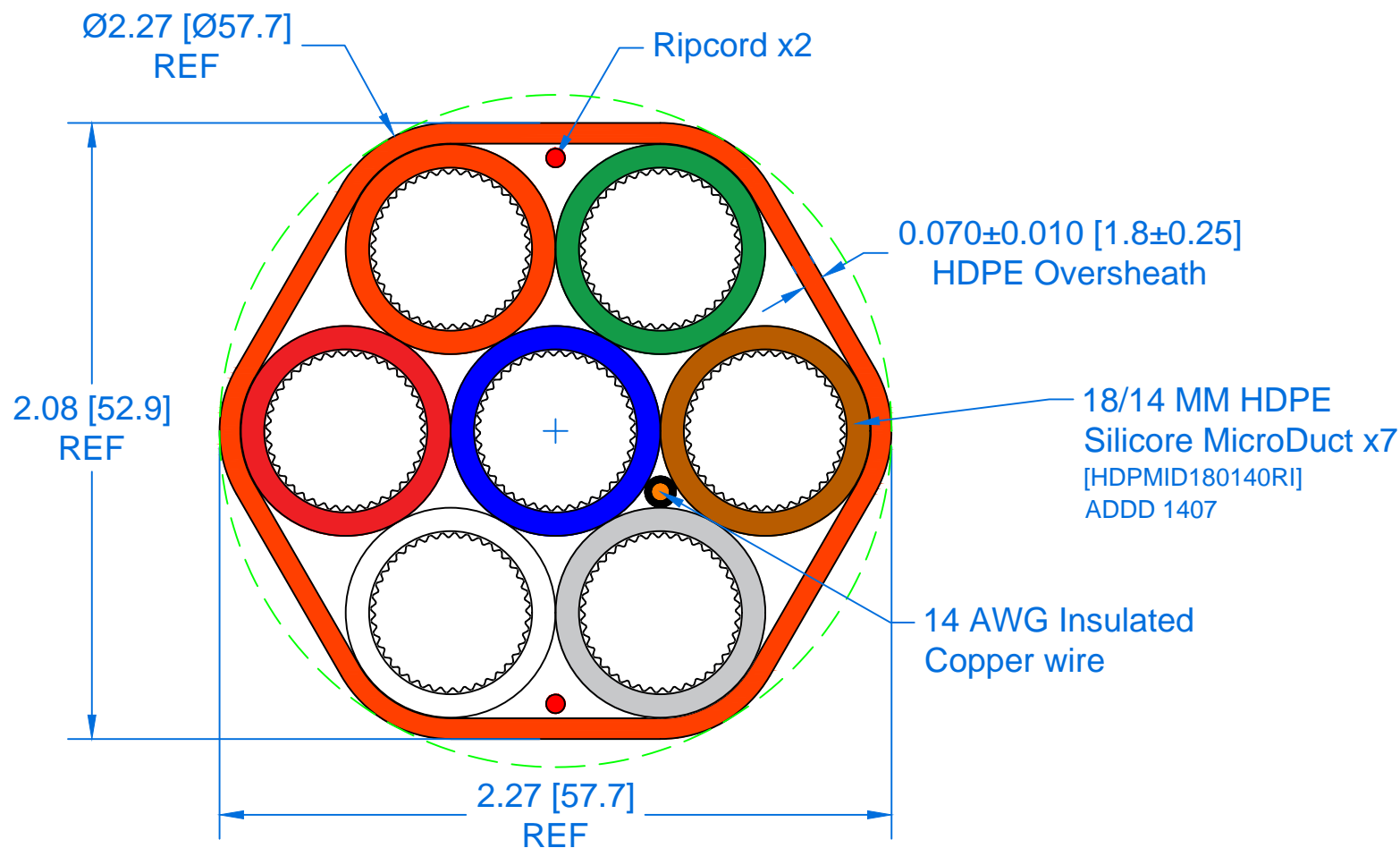
(d) Determination of just and reasonable rates; “usable space” defined.

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term “usable space” means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.


(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any

This drawing contains confidential information. The drawing and the information on it cannot be reproduced for any purpose without the written permission of Dura-Line Corporation.



Supported Bend Radius: 31" [787 mm]
 Unsupported Bend Radius: 52" [1,321 mm]
 Safe Pull Load: 3,522 lbs [1,599 kg]

MicroDuct weight = 0.462 lb/ft [687 g/m]
 HDPE Oversheath weight = 0.194 lb/ft [288 g/m]
 Total weight = 0.656 lb/ft [975 g/m]

REV	DATE	DESCRIPTION	APPROVED BY	DRAWING TITLE: FuturePath 18/14 MM x7 with HDPE 0.070" Sheath			
A	06/23/17	Changed color sequence; Referenced microduct drawing	C. Spradling	DRAWING: Marquis Merritt	PART #:	UNITS: INCH [MM]	DRAWING #: ADDD 1469
				DESIGN: TIM GRIMSLEY	NOTES: -	APPROVAL: Refer to Dura-Line portal	D-DD-FORM-017
				DATE: Aug. 13, 2015			



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

NMDOT BROADBAND INFRASTRUCTURE MANUAL

New Mexico Department of Transportation Utility Bureau
1120 Cerrillos Road, P.O. Box 1149
Santa Fe, NM 87504

BIM, APPENDIX A

1. New Small Cell Pole or Structure

Type	Criteria	One Time NMDOT Administrative Fee	Recurring Annual Fee
New Small Cell pole or structure	<ul style="list-style-type: none"> • Within NMDOT ROW • Outside an access-controlled area • 50 feet or less in height • Provides antennae space for at least the pole owner's antennae who is a broadband service provider 	<ul style="list-style-type: none"> • \$500.00 per pole • Non-refundable 	\$250.00 per each antennae pole or structure
<p>If antennae space is provided for two or more service providers, each additional subsequent competitive service provider shall be liable to pay the installing Small Cell pole owner a pole-attachment fee consistent with 47 USCS 224, including a proportionate share of the \$250.00 per pole annual ROW Use Fee.</p>			

2. Small Cell co-locations

Type	Criteria	One Time NMDOT Administrative Fee	Recurring Annual Fee
Small Cell co-locations* (Not allowed on NMDOT structures)	<ul style="list-style-type: none"> • Third party poles located within NMDOT ROW • Existing public utility permits 	<ul style="list-style-type: none"> • \$500.00 for up to five poles • \$100.00 for each additional pole • Non-refundable 	None
<p>*As applicable by 47 USCS 224, the owner of the third-party pole used for co-location may charge a pole fee complying with this statute.</p>			

3. Macro Cell Towers or Monopoles

Type	Criteria	One Time NMDOT Administrative Fee	ROW Use Annual Fee
Macro Cell Towers or Monopoles	<ul style="list-style-type: none">• Located within NMDOT ROW or• Located within NMDOT controlled property (patrol yards)• Outside of access-controlled areas• 50 feet or taller• Potentially accommodating space for more than one mobile wireless service provider	<ul style="list-style-type: none">• \$1000.00 per facility• Non-refundable	\$12,000.00 annually, plus 3.0% annual fee escalator after first year.
Third-Party Antennae Tenant(s)	Placed on Macro Cell Towers or Monopoles	\$250.00 per installation Non-refundable	\$3000.00 annually per tenant, plus 3.0% annual fee escalator after the first year.
If a tower owner deploys its own antennas on the structure, the combined fee shall be \$3000.00 per year with a 3.0% annual fee escalator after the first year.			

4. Crossings: Aerial cable, or Subterranean Conduit

Type	Criteria	One Time NMDOT Administrative Fee	Recurring Annual Fee
Fiber Optic or Wire	<ul style="list-style-type: none"> Located within NMDOT ROW Aerial Wire or Cable Subterranean conduit 	<ul style="list-style-type: none"> \$500.00 per each permit application Non-refundable 	None
The width of the highway or length-of-crossing does not alter the one-time administrative review (inspection) fee.			

5. Joint-Use Agreement

Type	Criteria	One Time Administrative Fee	Recurring Annual Fee
Joint-Use Agreement	<ul style="list-style-type: none"> Existing agreement Electric public utility use area within NMDOT ROW Additional pole attachment or Overlapping of broadband facilities 	<ul style="list-style-type: none"> \$500.00 per permit Non-refundable 	None
This is not considered a change of use to the electrical utilities ROW <i>joint-use-agreement</i> and does not impact the utilities prior rights. The fee covers the cost to conduct a site inspection and plan review for highway safety impact.			

6. All New Aerial Network within NMDOT ROW

Type	Criteria	One Time Administrative Fee	Recurring Annual Fee
All new aerial network within NMDOT ROW			
Broadband Provider and Renewable Energy non-PRC consumer-rate regulated electric business	<ul style="list-style-type: none"> • All new aerial broadband network • All new aerial transmission or distribution system • Within NMDOT ROW or property • Deployment of a broadband network on electric facilities 	<ul style="list-style-type: none"> • \$500.00 per permit • Non-refundable 	<ul style="list-style-type: none"> • 90% of the ROW area's fair market value of the land as-if vacant. • Similar to an easement but without any property rights. • Also requires an annual ROW Use Fee.
<p>The calculated ROW-Use area for the aerial installation shall be a strip of land with a minimum width of 12 feet for a pole network installation without crossarms on the poles (1.45 acres per mile) and a ROW-Use area with a minimum width of 16 feet for a new pole network with eight-foot crossarms (1.94 acres per mile).</p> <p>For electric transmission or distribution pole or tower networks, the actual ROW-Use area shall be calculated by the actual necessary construction, operation and maintenance area needed for a new electrical circuit network within NMDOT ROW.</p>			
<p>The aerial installation would likely render the ROW beneath such poles, towers, and lines unusable for NMDOT purposes.</p> <p>The NMDOT ROW must be wide enough to accommodate a new pole or tower network. The new network pole or tower may not encroach into the NMDOT highway clear zones without adequate collision barrier protective measures.</p>			

7. Subterranean or buried parallel fiber-optic or wireline cable, DBC or conduit installations

Type	Criteria	One Time Administrative Fee	Recurring Annual Fee
Access-Controlled Areas	Interstates and select US and New Mexico highways	\$500.00 Non-refundable	<ul style="list-style-type: none"> • \$5000.00 per mile per year; or • A one-time lump sum value of \$50,000.00 per mile for a 25-year term
Non-Access Controlled Areas	All non-urban middle mile facilities	\$500.00 Non-refundable	<ul style="list-style-type: none"> • \$1000.00 per mile per year; or • A one-time lump sum value of \$10,000 per mile for a 25-year term.
Rural – Last Mile		\$500.00 Non-refundable	<ul style="list-style-type: none"> • \$250.00 per mile per year; or • A one-time lump sum value of \$2,269.00 per mile for a 25-year term.

telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space.

(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996]. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access.

(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory [nondiscriminatory] basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate. A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way.

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written

notification of such action to any entity that has obtained an attachment to such conduit or **right-of-way** so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or **right-of-way** accessible.

(i) Costs of rearranging or replacing attachment. An entity that obtains an attachment to a pole, conduit, or **right-of-way** shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or **right-of-way**).

History

HISTORY:

Act June 19, 1934, ch 652, Title II, § 224, as added Feb. 21, 1978, [P. L. 95-234](#), § 6, [92 Stat. 35](#); Sept. 13, 1982, [P. L. 97-259](#), Title I, § 106, [96 Stat. 1091](#); Oct. 30, 1984, [P. L. 98-549](#), § 4, [98 Stat. 2801](#); Oct. 25, 1994, [P. L. 103-414](#), Title III, § 304(a)(7), [108 Stat. 4297](#); Feb. 8, 1996, [P. L. 104-104](#), Title VII, § 703, [110 Stat. 149](#).



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: State DOTs Leveraging
Alternative Uses of the Highway Right-of-Way
Guidance

Date: April 27, 2021

From: Stephanie Pollack
Acting Administrator

In Reply Refer To:
HEPR-40

To: Directors of Field Services
Division Administrators
Division Directors

PURPOSE

The purpose of this guidance document is to provide clarification to FHWA Division Offices who work with State departments of transportation (State DOTs) on certain uses of the highway right-of-way (ROW) that can be leveraged by State DOTs for pressing public needs relating to climate change, equitable communications access, and energy reliability. This guidance document supports the consistent utilization of the ROW for renewable energy generation, electrical transmission and distribution projects, broadband projects, vegetation management, inductive charging in travel lanes, alternative fueling facilities, and other appropriate uses as identified herein. FHWA Division Offices should share this memo with their State DOTs for their consideration for these alternate uses of highway ROW.

These uses of the highway ROW, including the development of renewable energy projects, enable breakthrough transportation technology related to electrification and connected and autonomous vehicles. These uses of the highway ROW also better utilize the full value and productivity of the existing asset while also reducing or eliminating the ongoing maintenance expenses for State DOTs. For example, State DOTs may create new revenue opportunities through participation in public-private-partnerships to develop renewable energy projects and negotiating agreements that include land lease or land license payments and power purchase agreements that reduce the States' energy costs, both actual and over the life cycle of the renewable energy project.

This guidance document first addresses renewable energy generation facilities, such as solar arrays and wind turbines, and alternative fueling facilities (e.g., electric vehicle (EV) charging within the highway ROW). The lands State DOTs manage can be suitable locations for renewable energy and alternative fueling applications. Such projects can:

- Better leverage the full value and productivity of existing highway ROW assets;

- Reduce greenhouse gas and other pollutant emissions;
- Promote energy security by diversifying energy generation and delivery methods;
- Foster the creation of a local green job market that enhances the viability of the Nation's renewable energy industry;
- Create a potential revenue source for State DOTs to develop projects and negotiate agreements that include land lease or land license payments and power purchase agreements; and
- Reduce or eliminate ongoing maintenance expenses for State DOTs.

Additionally, this guidance document provides relevant information on the use of certain vegetation management practices within the highway ROW to address climate change.

In considering requests pertaining to these ROW uses, FHWA Division Offices are encouraged to develop programmatic approaches, where appropriate, to processing such requests under the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act.

Coordination with State Departments

Division offices of the Federal Highway Administration should collaborate as frequently as practicable with State departments of transportation in reviewing utility accommodation policies under section 645.205 of title 23, Code of Federal Regulations. Division offices should foster an enhanced consideration of right-of-way and utility accommodation interests as part of the transportation planning process.

Additionally, FHWA Division Offices should encourage State DOTs to consider practices that can further broadband deployment initiatives, such as resource sharing. Best practices include minimizing repeated excavation of the roadway, coordinating with broadband utilities during highway construction, and integrating trenchless technologies into construction practices, as appropriate.

RENEWABLE ENERGY, ALTERNATIVE FUELING FACILITIES, ELECTRICAL TRANSMISSION AND DISTRIBUTION, AND BROADBAND PROJECTS

There are two methods for addressing renewable energy, alternative fueling, electrical transmission and distribution, and broadband projects (hereinafter known as “Clean Energy and Connectivity” (CEC) projects) in the ROW of a Federal-aid highway:

1. Accommodation as a utility under 23 CFR Part 645; or
2. Approval as an alternative use of the highway ROW under 23 CFR Part 710.

The FHWA Division Offices should encourage State DOTs to consider addressing these facilities through accommodation as a utility to the extent practicable and consistent with State law.

Accommodation as a Utility

As stated in 23 CFR 645.205, it is in the public interest to accommodate utility facilities on the highway ROW of a Federal-aid or direct Federal highway project when such use and occupancy of the highway ROW does not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and does not conflict with the provisions of Federal, State or local laws or regulations.

The Federal definition of a utility facility in 23 CFR 645.207 is broad and intended to cover the extensive array of uses that are defined by the States. State laws/regulations can be narrower in scope than the Federal definition. As such, States may broaden their applicable State laws/regulations to cover the full scope of the Federal definition should they wish these facilities to be accommodated in the highway ROW as a utility. In determining whether a proposed installation is a utility or not, the most important consideration is how the State DOT views it under its own State laws and/or regulations (23 CFR 645.209(m)).

Accommodation of these CEC projects as a utility should be reflected in the State DOT Utility Accommodation Policy (UAP). For example, for renewable energy generation, the State DOT UAP should be updated to include language: (1) acknowledging renewable energy generation as a utility facility when consistent with State law, establish the proper form of written agreement or permit, (2) discussing the means by which utility accommodation can be better integrated into the transportation planning process at the State, regional, and corridor levels, and (3) addressing applicable terms and conditions, pursuant to 23 CFR 645 Subpart B. Federal regulations provide each State DOT with flexibility regarding utility accommodation and FHWA must give programmatic approval of the UAP. For broadband projects, similar updates to the State DOT UAP can help accommodate utilities within the Federal-aid ROW.

However, a State DOT UAP that does not specifically mention CEC projects, such as renewable energy generation or broadband, but uses the FHWA definition of a utility, or is in a State where State law allows for renewable energy generation or broadband to be considered as a utility facility, can proceed with a permit for a facility so long as the permit addresses the applicable terms and conditions, including but not limited to the rights and interests being permitted, the terms of the agreement, and the roles and responsibilities of the parties.

State DOTs are not required to charge fair market rent or other fees for use of the ROW if accommodating the facility as a utility, and fees may be set at the discretion of the State. State DOTs are encouraged but not required to allocate collected fees for transportation uses, purposes, and services.

The State DOT's UAP outlines the procedures, criteria and standards to evaluate and approve applications for utility facilities within the highway ROW. Each State DOT must submit a UAP in accordance with 23 CFR 645.211 and 645.215, addressing how the State DOT will consider applications for utility accommodation within the access control lines of a freeway. State DOTs may accommodate utility facilities in the Interstate or non-Interstate highway ROW in accordance with 23 CFR 645.209.

If a State does not view renewable energy, electric vehicle charging stations, other alternative fueling facilities, or broadband as utilities under State laws and/or regulations, these facilities may also be approved in the highway ROW as an alternative use of ROW under Federal regulations, 23 CFR Part 710.

No Secondary Access Requirements for Renewable Energy Projects

There is no Federal requirement for secondary access to renewable energy generation facilities located adjacent to ramps, interchanges, corridor parking facilities, or within rest areas.

No Commercial Activity Restrictions for CEC Projects

A CEC project in the Interstate or non-Interstate ROW that is being accommodated as a utility facility serving the public is not a prohibited commercial activity under 23 U.S.C. 111 unless such project also qualifies as an automotive service station or other commercial establishment pursuant to 23 U.S.C. 111.

Alternative Use of the ROW

As a separate path from accommodation as “utilities”, the FHWA may approve alternative uses of the highway ROW if it is determined that such occupancy, use, or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon (23 CFR 1.23(c)).

The FHWA has determined that CEC projects provide an opportunity to reduce carbon emissions and are an important tool to address climate change. The FHWA has also determined that broadband installation can assist with equitable communications access. These non-highway alternative uses of highway ROW are in the public interest.

The FHWA will consider the installation of solar panels, electric vehicle charging stations, broadband deployment, and other CEC projects as acceptable alternative uses of the Interstate or non-Interstate highway ROW if they comply with Federal property management regulations at 23 CFR 1.23, 23 CFR Part 710, and 23 U.S.C 111.

Certain provisions must be incorporated in ROW Use Agreements for a time-limited alternative use of a Federal-aid highway (23 CFR 710.405), including planning and design details about the project and provisions for maintenance access, terms of use, maps, plans, and sketches.

Fair Market Value (FMV) Exceptions for Renewable Energy and Alternative Fuel Facilities

Alternative uses of the highway ROW, meaning any non-transportation uses, are subject to 23 U.S.C. 156 requirements to charge FMV for the lease or disposal of highway ROW if the property was acquired with Federal-aid highway funding. The FHWA can approve an exception for a social, environmental, or economic purpose (23 U.S.C. 156(b)) and 23 CFR 710.403(e)).

Based on the environmental benefits that would result from these installations, FHWA has determined that CEC projects located on Interstate or non-Interstate highway ROW qualify for an exception to the FMV requirement under 23 U.S.C. 156(b).

Location of Alternative Fuel Facilities

States are encouraged to consider an alternative fuel facility's proximity to off-highway travel centers and fuel retailers when siting these facilities along the highway ROW.

BIOLOGIC CARBON SEQUESTRATION PRACTICES

Environmental Benefits

Vegetation management practices along the highway ROW can affect the amount of carbon that is biologically sequestered, or removed from the atmosphere. Treatments, such as increased mowing heights and planting native grasses, can increase the amount of carbon that is absorbed from the atmosphere and stored in the soil. These practices are consistent with ROW maintenance and safety considerations, but also may be carried out by others under agreements for an alternate use of the ROW. These practices may provide other environmental benefits such as reducing erosion from stormwater runoff, reducing peak flow and runoff velocity, enhancing stormwater infiltration, and reducing dust. Additionally, the FHWA encourages State DOTs to use highway ROW to develop habitat and forage for Monarch butterflies, other native pollinators, and honey bees through plantings of native forbs (e.g., flowering plants) and grasses, including noninvasive, native milkweed species that can serve as migratory way stations for butterflies and facilitate migrations of other pollinators.

Vegetation management, as well as habitat and forage for Monarch butterflies, other native pollinators, and honey bees, can improve the affected environment and foster opportunities that support native habitat. It can provide: stream bank stabilization, wetland mitigation, water quality improvement, air pollution mitigation, noise abatement, and wildlife habitat. Further, vegetation management provides habitat for pollinators such as bees and butterflies. Pollinators are essential to agricultural production and ecosystem health.

The contents of this memorandum do not have the force and effect of law and are not meant to bind States or the public in anyway way, however, all cited statutes and regulations must be complied with. This memorandum is intended only to provide clarity to FHWA Division Offices regarding existing requirements under the law or agency policies. Questions may be directed to Nicholas Thornton at (202) 366-1352, Nicholas.thornton@dot.gov, or Lindsey Svendsen at (202) 366-2035, lindsey.svendsen@dot.gov.