

# WEST VIRGINIA DIVISION OF HIGHWAYS

## “DIG ONCE” GUIDANCE

### **INTRODUCTION**

The Commissioner of Highways in West Virginia is authorized by law to establish rules, policies and guidelines pertaining to the use of State rights-of-way and adjacent areas. The West Virginia Division of Highways (Division) [\*Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects\*](#) (the “Utility Manual”) presents the Division policy concerning the process, review, approval, location, installation, adjustment and maintenance of utilities on State highway right-of-way. The Division policy applies to all utilities, including but not limited to electric, wired and wireless communication, data transmission, gas, oil, petroleum products, chemical, water, steam, sewage and similar facilities that are to be accommodated, adjusted or relocated within State highway right-of-way. Further, the Division policy prohibits longitudinal occupancy inside the controlled access right-of-way by any utility on any type of highway that is fully or partially controlled, except that telecommunications companies may be permitted to locate underground fiber optic facilities therein in accordance with the federal Telecommunications Act of 1996 (P.L. 104-104), as amended, upon such terms as are acceptable to the Division and the US Department of Transportation, Federal Highway Administration (FHWA).

### **APPLICABILITY**

This document provides guidance concerning the considerations within the Utility Manual and the provisions of W.Va. Code §17-2E-1 *et seq.* that allow Telecommunications Carriers to install within Division right-of-way underground telecommunications facilities upon such terms as are acceptable to the Division and the FHWA. This guidance does not supersede existing federal or State guidelines, policy or procedures, or violate any provisions identified in the West Virginia Code of State Regulations pertaining to utility installation within Division rights-of-way. The provisions of this document are applicable to all Telecommunications Carriers that perform work within the State of West Virginia. Further, this guidance is applicable to any fully or partially controlled access right-of-way, non-controlled access right-of-way, or other property or real estate owned by the Division.

The FHWA has determined that the use of highway rights-of-way to accommodate public utility facilities is in the public interest (23 CFR Part 645.205 (a)). To the extent that any such facilities serve “the public,” they may be accommodated under the Utility Manual. If the use of such facilities is to serve a private or proprietary interest, that use might still be accommodated but such use would have to be approved under the airspace leasing

requirements of 23 CFR 710 Subpart D. The distinction between a public or private use will determine which regulations apply.

Telecommunications Carriers seeking to locate underground facilities within Division right-of-way may provide some form of compensation to the Division for costs incurred as a result of use and occupancy of the right-of-way, and those Telecommunications Carriers will be required to comply with all other applicable requirements of the federal Telecommunications Act of 1996, as amended. Except where they are expressly exempted from the requirements and rules of the Utility Manual, Telecommunications Carriers will comply with and observe all other restriction and requirements contained within the Utility Manual. Telecommunications Carriers do not have to provide proof that they have the power of eminent domain.

Underground “Dig Once” permit applications (DOH Form MM-109) will be given priority by the DOH over all other permit applications except Small Wireless Facilities applications, which have specific deadlines set by law.

## **DIG ONCE APPLICATIONS**

### **I. Definitions**

- (A) “Broadband conduit” or “conduit” means a conduit, innerduct, or microduct for fiber optic cables that support facilities for broadband service.
- (B) “Broadband” or “broadband service” means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection, that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: Provided, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.
- (C) “Commissioner” means the Commissioner of the Division of Highways or his or her designee.
- (D) “Council” means the Broadband Enhancement Council.
- (E) “Direct bury” means the burying of telecommunications wire or cable directly into the ground by means of plowing or direct insertion without the opening of a trench and without the installation of conduit or innerduct.
- (F) “Division” means the Division of Highways.

- (G) “Longitudinal access” means access to or the use of any part of a right-of-way that extends generally parallel to the traveled right-of-way.
- (H) “Permit” means an encroachment permit (Form MM-109) issued by the Commissioner pursuant to the Utility Manual, or equivalent policy, as may be currently enforced by the Division, that specifies the requirements and conditions for performing work in a right-of-way and where such work involves the creation or opening of a trench for the installation of telecommunications facilities in a right-of-way.
- (I) “Right-of-way” or “R/W” means land, property, or any interest therein acquired or controlled by the Division for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.
- (J) “Telecommunications carrier” or “carrier” means a telecommunications carrier:
  - (1) As determined by the Public Service Commission of West Virginia; or
  - (2) That meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153.
- (K) “Telecommunications facility” means any cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, or device that is used to transmit, receive, produce or distribute a signal for telecommunications purposes via wireline, electronic, or optical means.
- (L) "Utility" means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, data, information, video services, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater 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. The term "utility" also includes those similar facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use, or those facilities which are owned or leased by a local exchange carrier, as defined by 150 CSR 6.
- (M) “Wireless access” means access to, and use of, a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless telecommunications.

## **II. Permit Application**

- (A) A permit from the appropriate District or Districts must be obtained by the Carrier prior to accessing a Division R/W. A Carrier shall submit to the relevant district or districts a permit application for the longitudinal installation, extension, expansion or upgrade of underground telecommunications network,

or wireless access, or use of Division-owned conduit or other telecommunications facilities within the Division's R/W.

(B) At a minimum, the following information is required to be submitted as a permit application package:

- (1) A complete permit application, Form MM-109. The District shall promptly review the MM-109 for completeness and return an incomplete application to the Carrier with an explanation of the additional information that is required.
- (2) Plan View (\*.pdf, \*.kmz, or \*.dgn format), Profile View, Cross Sections (if applicable) which indicate the proposed underground telecommunications installation, extension, expansion or upgrade. It is anticipated that the District or Districts will have participated in the development of plans in conjunction with the agreement which will be incorporated into the permit application.
- (3) Details, including but not limited to, description of work including the type, installation technique and length of work within the Division's R/W, a location map, temporary traffic control plan, trench repair details (as applicable), conduit size and type, number of innerducts.
- (4) Evidence of applicant's coordination with and approval from cultural and natural resource agencies, as applicable. See Appendix B.
- (5) Coordinates of the beginning and ending points, for each segment, for the installation of the underground telecommunications facility.
- (6) The project, in its entirety, must be set forth in the application.
- (7) Inspection fees and bond, as applicable.
- (8) Written affirmation by the applicant Carrier of compliance with W. Va. Code §17-2E-5 (the "Dig Once" statute) and either:
  - (a) written affirmation that no other carriers provided within the required timeframe notice of interest to share the applicant's trench; or
  - (b) a shared-use agreement as provided in Section VI below.
- (9) Completed Submission Checklist. A copy of the checklist is attached as Appendix A.

(C) Application Submission and approval

- (1) Upon receipt of the complete MM-109 permit application, Division will approve or advise applicant of any deficiencies in writing within 60 days. Potential deficiencies are as follows:
  - (a) Adversely affecting the safety, design, construction, operation, maintenance or stability of the state road system;
  - (b) Interfering with or impairing the present use or future expansion of any affected highway or bridge;

- (c) Conflicting with applicable Division policy with respect to requirements and conditions for performing work in Division's rights-of-way;
  - (d) Violating applicable federal or state laws.
- (2) Applicant may correct any deficiencies and resubmit the application, which will be reviewed by Division and either approved or denied within 30 days of the resubmittal.
- (3) Compliance with applicable environmental laws are the responsibility of the applicant. Evidence of applicant's coordination shall be attached to the MM-109 submission. See Appendix B. Upon receipt of the environmental compliance documentation, Division will provide approval within 15 days.

### **III. Joint Use of Trench and "Dig Once" Application**

- (A) Dig Once requirements apply to in-ground construction or installation of telecommunication facilities in rights-of-way owned or controlled by the Division. However, the requirements of joint use do not apply to the following projects:
- (1) Where the trench is less than 1,000 continuous feet in length;
  - (2) Where the direct bury method is used;
  - (3) Where the trench or related facilities are solely for the service of entities involved in national security matters or where disclosure or sharing of a trench location would be against federal policy; or
  - (4) Where the Carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is made available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission.
- (B) If the Project is not exempted, upon application for a permit, the applicant must notify the Office of Broadband and comply with W.Va. Code § 17-2E-5. Certification of compliance by the Office of Broadband shall be provided to Division for each application, which will be retained with the permit application.
- (C) Should the Dig Once Process result in more than one Telecommunications carrier jointly using a trench, a copy of the executed agreement shall be provided to the Division and retained with the permit application.

### **IV. Miscellaneous**

- (A) The responsible District, or Districts shall review the application for completeness and accuracy and shall issue a permit granting access under the

- law and this guidance; provided, that the Division has complied with all applicable federal regulations with respect to approval.
- (B) The District or Districts will scan and add the Permit to the Division's recordkeeping database software.
  - (C) The District or Districts will send a scanned copy of the Permit and attachments to appropriate Division personnel and to the Office of Broadband.
  - (D) The Carrier will coordinate its work with the District or Districts, which includes but is not limited to the following:
    - (1) The Carrier is required to contact the District Utility Supervisor a minimum of 48 hours prior to construction or as designated in the permit application; and
    - (2) The Carrier will cooperate in allowing the District or Districts to inspect, as needed, the work performed by the Carrier within the Division's R/W.
  - (E) Relocations or modifications of existing telecommunication facilities in the Division's R/W are not subject to the provisions of the Dig Once law, nor shall the provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a R/W. The relocation of telecommunications facilities within the Division's R/W shall be in accordance with the provisions of W.Va. Code §17-4-17b.
  - (F) Any longitudinal access or wireless access to a R/W granted by the Division does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the Division's rules, policies, and guidelines related to the Utility Manual.
  - (G) The District will release the construction bond, if one was required, upon satisfactory completion of the terms and conditions of the agreement and permit.

## APPENDIX A

# Utility Dig Once Application Submission Checklist

Applicant Carrier: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location (Route(s), County(ies)): \_\_\_\_\_

Submission Date: \_\_\_\_\_

1. Permit Application for underground fiber installation within WVDOH R/W in adherence to the Dig Once policy submitted by Applicant Carrier.
  - a. Application Package (Submitted to WVDOH's respective District and Office of Broadband)
    - MM109 form including Applicant Carrier's Contact Information (Responsible Employee's Name, Mailing Address, Phone Number, Email Address).
    - Plan View (.pdf, .kmz, or .dgn format), Profile View, Cross Sections (if applicable).
    - Description of Work (including, but not limited to, type and length of work within WVDOH R/W), Location Map, Temporary Traffic Control Plan, Trench Repair Details, Conduit Size and Type, Number of Innerducts, etc.
    - Evidence of applicant's coordination with and approval from cultural and natural resource agencies, as applicable.
    - Coordinates of begin and end points for each segment.
    - Inspection Fees and Bonds, as applicable.
  - b. Notifications by Applicant Carrier
    - Office of Broadband and other carriers on record (copies to Council by email)
2. Post announcement submission to District by Applicant Carrier (except where noted)
  - Agreement with other carriers, if applicable
  - Copies/receipts of all Notifications
  - Written certification of Compliance with Dig Once from the Office of Broadband
3. Finalize Application
  - Issue Permit
  - Send Copy of Approved Permit to Council
  - Applicant Carrier to inform WVDOH a minimum of 48 hours prior to commencing work

## APPENDIX B

### **Outline of NEPA Requirements for New Utility Installations Controlled Access or Interstate Rights of Way**

**Option 1** – If the utility project has a NEPA review completed by a Federal agency, then this must be provided to WVDOH.

**Option 2** – Evidence of coordination and approval with cultural and natural resource agencies must be provided to WVDOH along with the encroachment permit.

Level of NEPA review: Programmatic Categorical Exclusion (PCE)

Project package submitted to WVDOH should include:

- Map of proposed route
- Description of project, including construction methods and road names/numbers
- Project plans for entire project

#### **Agency coordination/approval to be completed by permittee:**

- Cultural Resources
  - State Historic Preservation Office (SHPO) – coordination to determine whether project may affect historic/archaeological resources in the area
  - Tribal consultation, if required based upon project location, will be conducted by WVDOH/FHWA
- Natural Resources
  - West Virginia Division of Natural Resources (WVDNR)
  - United States Fish & Wildlife Service (USFWS)
    - Section 7 Endangered Species Act
    - Section 10 Endangered Species Act
- Other coordination to be considered for utility projects within WVDOH right-of-way, that may or may not be applicable in addition to others that may not be listed here, depending on location and scope of the project:
  - West Virginia Parkways Authority (WVPA)
  - National Forests (US Department of Agriculture)
  - National Parks (US Department of the Interior)
  - State Parks and Forests (WVDNR)
  - Railroads
    - Class I Private or Private Short Lines
    - WV State Rail Authority (WVSRA), which may include rail-trails
  - Federal Highway Administration (FHWA)
  - WV Division of Real Estate, if fiber project includes cell towers
- Any applicable permits
  - United States Army Corps of Engineers (USACE)
    - Section 10 of the Rivers and Harbors Act
    - Section 404 of the Clean Water Act (CWA)
  - West Virginia Department of Environmental Protection (WVDEP)
    - Stormwater Pollution Prevention Plan
    - General Construction Permit
    - NPDES Permit
    - Section 401 Water Quality Certification
    - United States Coast Guard (USCG)