



State of Utah

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DEPARTMENT OF TRANSPORTATION

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June 13, 2017

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SUBJECT: The Utah Department of Transportation's Response to Notice of Proposed Rulemaking and Notice of Inquiry – Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment
WT Docket No. 17-79

Dear Secretary Dortch:

The Utah Department of Transportation (“UDOT”) is submitting the following comments concerning the Federal Communications Commission’s Notice of Proposed Rulemaking and Notice of Inquiry – WT Docket No. 17-79.

1. Safety Concerns with Above Ground Installations within the State Highways.

The primary function of the state highways is to provide for the safe and efficient movement of traffic.¹ In addition, a state highway shall primarily move higher traffic volumes over longer distances than highways under local jurisdiction.² The state highways generally involve higher speed highways than local government highways. Although UDOT does accommodate utilities, the primary purpose of the state right-of-way is to maximize the public

¹ Utah Code §72-4-102.5(2)(c).

² Utah Code §72-4-102(3)(b).

use of the right-of-way for transportation purposes and to ensure that utility installations and operations affecting the state right-of-way are installed and accessed in compliance with state and federal law.³ The permitted use and occupancy of right-of-way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public.⁴ With the interstate highways and federal-aid projects, the Federal Highway Administration's ("FHWA") rules concerning highways apply.

UDOT does accommodate telecommunication facilities within the right-of-way.⁵ For highways that are not interstate or limited access highways, UDOT does not charge a lease fee for utility companies that provide a service to the public. Only the actual costs for processing a permit and inspections fees are charged.⁶ See Exhibit A, which states the current encroachment permit fees. Any requirement mandating lower fees than the actual costs will require the states to subsidize the telecommunications industry.

Most telecommunication facilities are fiber lines within a conduit that are located underground. This underground use does not typically conflict with the transportation use. UDOT does not allow any utility facilities to be placed on state-owned light or signal poles due

³ "Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated within the right-of-way of Federal-aid or direct Federal highway project when such use and occupancy of highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State, or local laws or regulations." 23 CFR §645.205(a)

⁴ "The manner in which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional operational safety and the functional and aesthetic quality of the highway facility. This subpart shall be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation." 23 CFR §645.205(c).

⁵ Within city limits, UDOT does not control the right-of-way behind back of curb.

⁶ Utah Code §§72-7-102(4) and 63J-1-504(2).

to safety concerns. Telecommunication pole towers installations that are 45 to 120 feet create safety conflicts with the transportation use of the highway.

UDOT follows nationally instituted policy for the establishment of clear zones, which increases safety and improves traffic operations. In the clear zone, UDOT does not allow the installation of utility poles and other ground mounted structures. Reducing hazards include placing utility facilities that are above ground at locations which protect out-of-control vehicles, using breakaway features, impact attenuation devices, or shielding. Even with the mitigation devices, the pole towers are problematic.

The clear zone is the entire roadside border area starting at the edge of the traveled way, available for the safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, a non-recoverable slope, and the area at the toe of the recoverable slope. The actual width is dependent upon traffic volumes and speeds, and roadside geometry. Besides placement issues, having personnel access the tower or utility pole at certain locations also create concerns for vehicles pulling on and off the state highway.

The clear zone considerations are applied equally to all telecommunication companies. Until recently, the telecommunication companies installed the tower poles on private property near highways and streets. The tower poles do not cause substantial safety risks on private property outside of the state highway right-of-way.

Decisions concerning the placement of any above ground utility pole or tower pole are based upon public safety of the traveling public.⁷ Above ground utility or tower pole conflict

⁷ 47 USCA §253(b) “Nothing in this section shall affect the ability of the State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers.

with the state highway's transportation uses, which are designed to move vehicles at higher rates of speed and capacity than city or county streets.

2. Application Decision Deadlines. By administrative rule, UDOT requires the permit application to be fully complete before the application will be processed.⁸ If the application is not complete within a certain time period, the application will be closed. No decisions are made on incomplete applications because the requested information is necessary for a decision to be issued. This information may include, but is not limited to, when and where the work will be performed, type of installation, impacts to the traffic of the state highway. All safety issues must be addressed.

Any shot clock start considerations by the Federal Communications Commission must be based upon completed applications. Otherwise the telecommunications company may fail to submit a completed application and continue to not submit all the requested information until the shot clock time period has run out. Such an approach would have detrimental impacts to safety of the traveling public on state highways because the Federal Communications Commission seeks to remove any authority from the states and local governments to address safety and placement after the shot clock has run out.

UDOT's own timeframes to process applications are based upon a completed application, not when the incomplete application is submitted or when a pre-application meeting occurs. Currently UDOT processes completed applications within a self-imposed performance standard of a 7-day turnaround. UDOT's goal is to meet or exceed this performance standard 90% of the time. Permits are processed on first come, first served basis based upon completed applications.

⁸ 47 USCA §253(b) "Nothing in this section shall affect the ability of the State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers.

See Exhibit B for a table of performance measures. The number of permit requests is increasing over time. Between June 2016 and June 2017 UDOT processed 3,868. These permits were processed and issued without any mandatory shot clock or preferential order. The purpose of the pre-application access meeting is to help the entity or person with the application and provide information concerning the requirements contained in the rule.

If the Federal Communication Commission desires to adopt different or new shot clocks, these deadlines must be based upon the submission of a completed application. UDOT's review of applications to address above ground pole installations with the safety of the traveling public is not an impediment but an important safety measure to protect the traveling public.

Dated this 13th day of June, 2017

Utah Department of Transportation

Alana Spendlove
Statewide Railroad and Utilities Director

EXHIBIT A

EXHIBIT A

UDOT ENCROACHMENT PERMIT FEES

Utility Permits \$135-\$500

Landscaping Permits \$30

Manhole Access Permits \$30

If Any Of The Above Are Determined To Cause An Excessive Impact And/Or Duration Fees Shall be Assessed Using the Table Below.

Use the table below to figure the cost. ADT stands for Average Daily Traffic. These costs do NOT include inspection fees or additional UDOT Special Event Traffic Control. If there are questions concerning this, please contact a Permits Officer to verify the fee.

FEE SCHEDULE TABLE

Point Value	ADT	Linear Footage	Right-of-Way Impact	Road Impact	Road Classifications
1	<5,000	<88 feet	No asphalt cut or >8" Bored or Jacked	<20%	All Others
2	5,000 to 20,000	89 to 199 feet	8" - 16" Bored or Jacked	20 % to 50%	Principal Arterial Freeway/Expressway
3	>20,000	*200 feet to 1 mile	<16" Bored or Jacked or Open Cut	>50%	Interstate

POINT VALUE TABLE

Activity	Points	** Maximum Permit Time	Cost
8001	No construction impact	1 week	\$30.00
7P01	1 thru 7	1 week	\$135.00
7P02	8 thru 11	2 weeks	\$300.00
7P03	12 thru 15	4 weeks	\$500.00

AERIAL CABLE INSTALLATION

Road Classification	Road Impact	Cost
Minor Roads	Minor Crossing	\$30.00
Principle Arterial/Freeway	Major Crossing	\$135.00
All Roads	Pole Line	\$135.00 Min.

***Permits may be extended at the discretion of the Region Permits Officer**

Hourly Inspection Fees

Normal Business Hours	\$60.00 an Hour
After Hours and Overtime	\$80.00 an Hour

UDOT ACCESS REVIEW FEES

Access Review Fees

Type 1	\$75.00
Type 2	\$475.00
Type 3	\$1000.00
Type 4	\$2,300.00

Access Violations Fees Are 100.00 Per Day

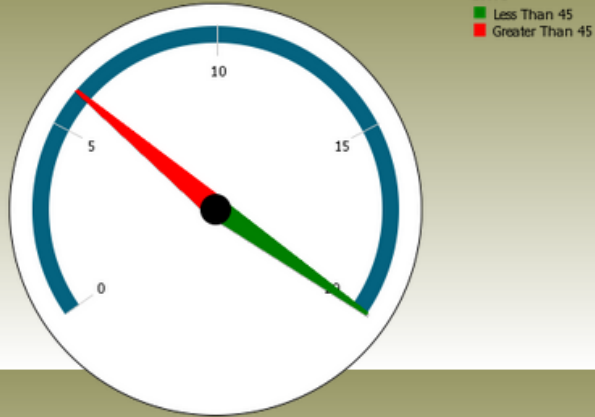
EXHIBIT B

EXHIBIT B

Jul 10, 2017

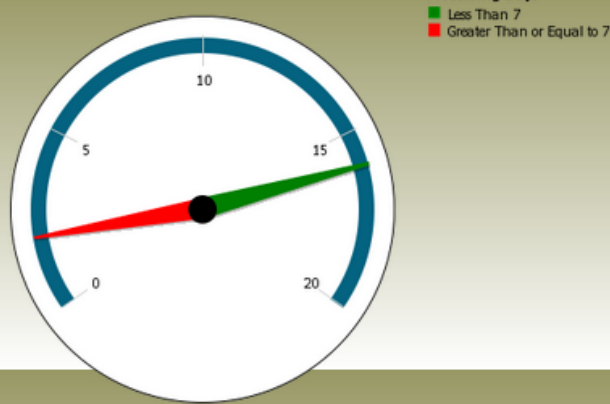
Access

Open Access Applications By Days



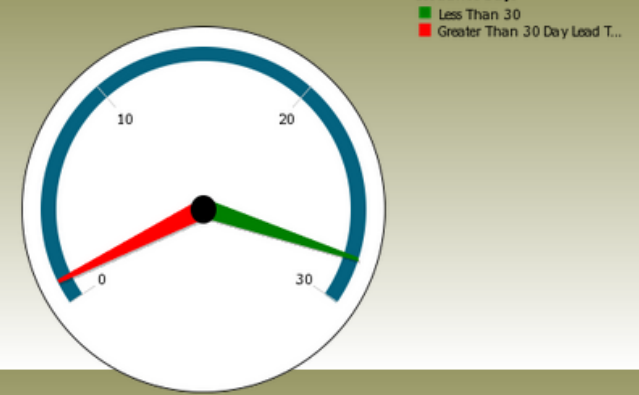
Encroachment

Open Encroachment Applications By Days



Special Events

Special Events Applications By Days

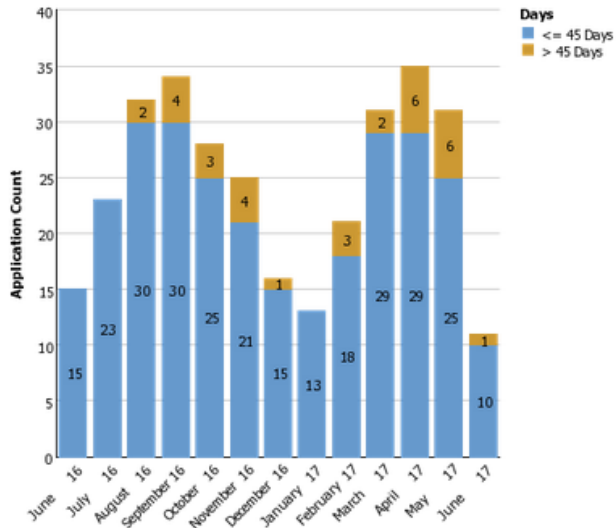


Measure of open and active Access applications by calendar days. Per R930-8 Limited-Access and No-Access control line modifications are not included or displayed. Note, dashboard is tracking "UDOT Days" only.

Measure of open Encroachment applications by calendar days. Note, dashboard is tracking "UDOT Days" only.

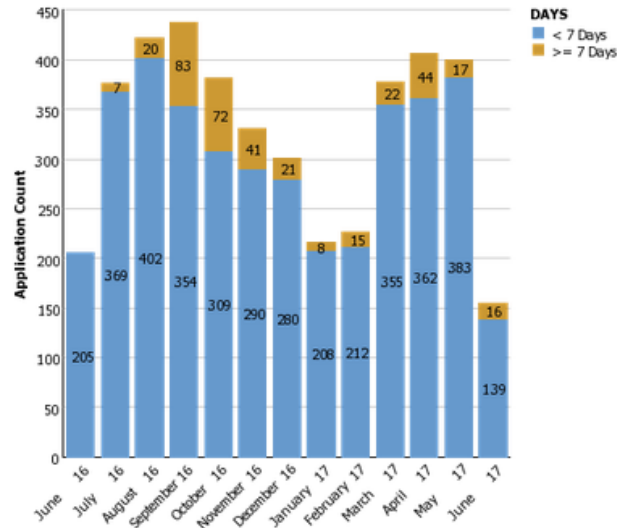
Measure of upcoming Special Events, relating Application Date to the Permit Date of Issue in calendar days. Also a measure of open past-due Special Events applications with no Permit issued.

Closed Access Applications



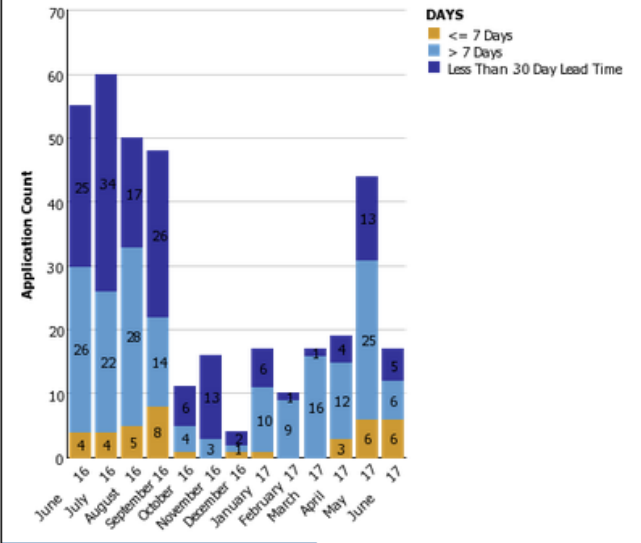
Days	Year Count
> 45 Days	32
<= 45 Days	283

Closed Encroachment Applications



Days	Year Count
>= 7 Days	366
< 7 Days	3,868

Closed Special Event Applications



Days	Year Count
<= 7 Days	39
> 7 Days	176
Less Than 30 Day Lead Time	153

A rolling 12 month measure of Access application process times in calendar days.

A rolling 12 month measure of Encroachment application process times in calendar days.

Measure of past Special Events, relating Application Date to the Permit Date of Issue in calendar days.