



North Dakota Department of Transportation

Grant Levi, P.E.
Director

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Governor

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FCC Mail Room

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
FCC Headquarters
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Dear Ms. Dortch:

Subject: Response to Public Notice – Comments Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling, WT Docket Number 16-421

Enclosed are comments from the North Dakota Department of Transportation (NDDOT) regarding the above-referenced subject. We appreciate the FCC providing us the opportunity to comment on this subject, which is very important and affects the future advancements relating to wireless technology and public right of way.

Sincerely,

Grant Levi
Director

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enclosure

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Response to Public Notice – Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies
Mobilitie, LLC, Petition for Declaratory Ruling WT Docket No. 16-421

The North Dakota Department of Transportation (NDDOT) is submitting comments concerning the petition filed to the FCC by Mobilitie for Declaratory Ruling. Although this public notice is geared toward local authorities, NDDOT felt it was important to address concerns from a state DOT perspective.

NDDOT is authorized to and does accommodate utilities, installation and maintenance of utility facilities on the right-of-way in accordance with state and federal laws and regulations.¹ Any permitted utility within the right of way should not interfere with the free and safe flow of traffic, existing, planned or future use of the right-of-way for highway purposes, or impair its scenic appearance.² On Interstate and federal-aid highways, the Federal Highway Administration's (FHWA) rules concerning utility accommodation apply.

The NDDOT has established guidelines for utility accommodation within the document "A Policy for Accommodation of Utilities on State Right-of-Way."³ Consistent with 23 CFR, the guidelines within are provided in the interest of developing and preserving safe highway operations and roadsides. Current NDDOT policy does not allow longitudinal utility installations within the control access lines of the Interstate freeway except in special cases, but does allow crossings. NDDOT may adopt a more restrictive policy concerning a longitudinal utility along freeway right-of-way.⁴ Non-freeway longitudinal utility installations are permitted along with crossings, but must be located as near to the right-of-way line as practical. NDDOT would oppose any action that would diminish its authority to manage and regulate the use of highway right-of-way.

¹ "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." 23CFR §645.205(a). See also, NDCC Sections 24-01-39 and 24-01-40.

² "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).

³ <http://www.dot.nd.gov/manuals/environmental/policy-utilities-state-row.pdf>

⁴ 23 CFR §645.209(a)(3).

NDDOT requires permit applications to be submitted to the specific district where the utility will be installed. North Dakota contains eight districts that have a specific utility coordinator who handles each permit request. There is no specified timeline for review, but each permit application is handled as they are submitted. There are many concerns that are being addressed in a permit application such as safety, current and future right of way use, etc. As a precedent setting permit application is received, additional review time should be expected, but over time, as policy decisions have been made, permit application timelines will become more streamlined. Limits on review times should not be set until agencies have fully addressed all concerns with new types of utility installations, and completed any modifications to their federally required utility accommodation policies.

NDDOT has adopted a utility permit fee schedule that is developed on the basis of covering administrative costs. Permit fees are a one-time charge when a permit application is submitted. NDDOT believes that it applies these costs in a fair and reasonable manner to all utility companies. We are unaware of any complaints about unfair or excessive costs from the utility companies we have dealt with.