ATTACHMENT 2

U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Traffic Safety Facts 1996

A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System

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INTRODUCTION

In this annual report, *Traffic Safety Facts 1996: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*, the National Highway Traffic Safety Administration (NHTSA) presents descriptive statistics about traffic crashes of all severities, from those that result in property damage to those that result in the loss of human life.

Information from two of NHTSA's primary data systems has been combined to create a single source for motor vehicle crash statistics. The first data system, the Fatality Analysis Reporting System (FARS), is probably the better known of the two sources. Established in 1975, FARS contains data on the most severe traffic crashes, those in which someone was killed. The second source is the National Automotive Sampling System/General Estimates System (GES), which began operation in 1988. GES contains data from a nationally representative sample of police-reported crashes of all severities, including those that result in death, injury, or property damage. The next two sections provide a brief description of FARS and GES.

Both systems were designed and developed by NHTSA's National Center for Statistics and Analysis (NCSA) to provide an overall measure of highway safety, to help identify traffic safety problems, to suggest solutions, and to help provide an objective basis on which to evaluate the effectiveness of motor vehicle safety standards and highway safety initiatives. Data from these systems are used to answer requests for information from the international and national highway traffic safety communities, including state and local governments, the Congress, Federal agencies, research organizations, industry, the media, and private citizens.

FARS OPERATIONS

FARS, which became operational in 1975, contains data on a census of fatal traffic crashes within the 50 states, the District of Columbia, and Puerto Rico. To be included in FARS, a crash must involve a motor vehicle traveling on a trafficway customarily open to the public, and must result in the death of an occupant of a vehicle or a nonmotorist within 30 days of the crash.

NHTSA has a cooperative agreement with an agency in each state's government to provide information on all qualifying fatal crashes in the state. These agreements are managed by Regional Contracting Officer's Technical Representatives located in the 10 NHTSA Regional Offices. Trained state employees, called "FARS analysts," are responsible for gathering, translating, and transmitting their state's data to NCSA in a standard format. The number of analysts varies by state, depending on the number of fatal crashes and the ease of obtaining data.

FARS data are obtained solely from the state's existing documents:

- Police Accident Reports
- State Vehicle Registration Files
- State Driver Licensing Files
- State Highway Department Data
- Vital Statistics
- Death Certificates
- Coroner/Medical Examiner Reports
- Hospital Medical Reports
- Emergency Medical Service Reports

From these documents, the analysts code more than 100 FARS data elements. (See Appendix A for a list of the FARS data elements.) The specific data elements may be modified slightly each year to conform to changing user needs, vehicle characteristics, and highway safety emphasis areas. The data collected within FARS do not include any personal identifying information, such as names, addresses, or social security numbers. Thus, any data kept in FARS files and made available to the public fully conform to the Privacy Act.

Each analyst enters data into a local microcomputer data file, and weekly updates are sent to NHTSA's central computer database. Data are automatically checked when entered for acceptable range values and for consistency, enabling the analyst to make corrections immediately. Several programs continually monitor and improve the completeness and accuracy of the data. The 1996 FARS data file used for the statistics in this report was created in July 1997; however, the 1996 FARS file will *officially* close on January 16, 1998. This additional time provides the opportunity for submission of important variable data requiring outside sources, which may lead to changes in the final counts. The updated final counts for 1995 are reflected in this report. The updated final counts for 1996 will be reflected in the 1997 annual report.

GES OPERATIONS

GES data are obtained from a nationally representative probability sample selected from all police-reported crashes. The system began operation in 1988. To be eligible for the GES sample, a police accident report (PAR) must be completed for the crash, and the crash must involve at least one motor vehicle traveling on a trafficway and result in property damage, injury, or death. Although various sources suggest that about half the motor vehicle crashes in the country are not reported to police, the majority of these unreported crashes involve only minor property damage and no significant personal injury. By restricting attention to police-reported crashes, the GES concentrates on those crashes of greatest concern to the highway safety community and the general public.

GES data collectors make weekly visits to approximately 400 police jurisdictions in 60 sites across the United States, where they randomly sample about 48,000 PARs per year. The collectors obtain copies of the PARs and send them to a central contractor for coding. No other data are collected beyond the selected PARs—no driver license, vehicle registration, or medical information is obtained.

Trained data entry personnel interpret and code data directly from the PARs into an electronic data file. Approximately 90 data elements are coded into a common format. (See Appendix B for a list of the GES data elements.) Some elements are modified every other year to meet the changing needs of the highway safety community. To protect individual privacy, no personal information (names, addresses, specific crash locations) is coded. During data coding, the data are checked electronically for validity and consistency. After the data file is created, further quality checks are performed on the data through computer processing and by the data coding supervisors. The 1996 file used for the statistics in this report was completed in July 1997.

Before the
Federal Communications Commission
Washington, D.C.

Minnesota Petition for Declaratory Ruling	)	
Concerning Access to Freeway Rights-of-Way	)	CC Docket No. 98-1
Under Section 253 of the Telecommunications Act	)	

Supplemental Filing
of the
United States Department of Transportation

Introduction

This proceeding will determine the impact of section 253 of the Telecommunications Act of 1996 (47 U.S.C. § 253) on Minnesota's plan to extend telecommunications services throughout the State via a controlled grant of access to rights-of-way ("ROW") along limited access highways. Arrangements by which states exchange access to public ROW in return for telecommunications goods and services are termed "shared resource projects." Minnesota and a growing number of other states are entering into shared resource projects, under circumstances that do not pose untoward safety risks, in an effort to introduce or expand the benefits of modern telecommunications services without having to place additional demands on state financial resources. In the instant case Minnesota has tried to extend these benefits throughout the state, rather than see them limited to more heavily populated areas.

The United States Department of Transportation ("Department" or "DOT") has participated in this proceeding because of its expertise (through the Federal Highway Administration ("FHWA")) in administering the federal interstate highway program and its statutory responsibility to promote the development and implementation of intelligent transportation systems ("ITS"). *See* Reply Comments, filed April 9, 1998. This background has exposed DOT to two facts that are relevant to this case. The first is that states that seek to expand the benefits of ITS and other contemporary telecommunications technologies to rural areas are usually more successful if they control access to the right-of-way to individual telecommunications providers in some fashion rather than if they allow unencumbered access by multiple providers. The second is that states

control access not simply to achieve such extensive coverage, but also in order to reduce the safety risk invariably presented by the presence of work crews and equipment on limited access high-speed roadways. Forced removal of these controls may therefore cause states to return to a policy prohibiting such access altogether.

These points have important implications for the decision in this case. It has become apparent, however, that the administrative record in this proceeding is silent on these matters. Specifically, there are no hard data in the record on whether there is a discernible pattern in the terms of controls placed on ROW access in cases where states seek and obtain relatively broad telecommunications coverage, and the reasons for the restrictions. Neither does the record provide information of the possible effects on state ROW policies from a decision that requires relatively open physical access if a state allows any access at all. Pursuant to 47 C.F.R. § 1.1206(b)(1),.we seek to remedy the absence of information on these matters with the instant filing.

In order to provide the Federal Communications Commission ("FCC" or "Commission") with concrete information for the record we have compiled state-specific data on shared resource projects. Attachment 1 hereto, entitled *The Role of Access Policies in Wireline Shared Resource Projects* ("Access Report"), contains the information we have been able to accumulate in the limited time available. [1] The Access Report contains the details of all shared resource agreements executed to date or in advanced negotiations. The Attachment includes as well information on telecommunications capacity and services received by states for transportation purposes in return.

The Department also addresses below the safety component of these projects, and why it continues to be a substantial factor in limiting physical access to ROW on restricted access roadways. We explain in particular that the basis for controlling physical access in these cases - safety - could lead some states to retain or revert to an outright ban on such access if a decision in this proceeding required states to allow relatively open access if they permit any access at all.

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[1]/ The data were compiled by Hagler Bailly, Inc. under contract to FHWA. Hagler Bailly is a consulting firm that has expertise in shared resource projects. The FHWA has relied upon Hagler Bailly or its predecessor for research into and technical assistance since 1995, and uses the firm 's expertise in order to advise states on this subject. Hagler Bailly maintains a data base on shared resource projects; to our knowledge the firm is among the few definitive experts in the field.

Right-of-Way Access and Safety

From 1956, the beginning of the interstate highway system, until early in this decade, the rights-of-way on all limited access highways was simply forbidden to utilities and others. *See* DOT Reply Comments at 2-3. This prohibition was enshrined in federal regulation until 1989, and thereafter in the policies of individual states. Id. In 1989 DOT allowed states to set their own "utilities accommodation" policy, although each state's policy must be approved by the FHWA. Id. The original, fundamental reason for this restriction lies in the central mission of transportation agencies to enhance safe and efficient surface transportation, and the threat to safety posed by the physical presence of construction and maintenance vehicles and personnel near the high speed traffic that is characteristic of limited access highways. That threat applies both to the travelling public and to the work crews. In 1997, the latest year for which information is available, there were some 75,000 accidents in work zones (which are overwhelmingly in rights-of-way) on the nation's roads, resulting in roughly 36,000 personal injuries and 658 deaths. [2]

The letter sent to this docket from the Minnesota Telephone Association dated April 21, 1999 ("MTA letter"), overlooks these facts. It also incorrectly asserts that "industry and federal guidelines recognize the minimal risk" of construction on rights-of-way. MTA letter at 2. FHWA produces an entire volume of standards and guides for protecting travelers and work crews on rights-of-way. *See* FHWA, *Manual on Uniform Traffic Control Devices – Part VI: Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations* (1988 ed., Rev. 3, September, 1993). The cover and the table of contents of this publication comprise Attachment 3 hereto. Finally, although construction "at the outer edge of a broad right-of-way, using equipment which is never on the traveled roadway" may minimize safety risks (MTA letter at 2), rights-of-way even on limited access roadways are by no means so uniformly "broad." Minnesota DOT reports that less than 50 percent of the 2,000 miles covered in the contract at issue has a ROW so wide that construction equipment and crews can avoid working in the shoulder area (*i.e.*, not triggering the FHWA standards above). In other

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[2]/ The National Highway Traffic Safety Administration ("NHTSA") is another administration within the Department that, *inter alia*, accumulates statistics on motor vehicle accidents. The figures given above were obtained from NHTSA's data base (specifically, the Fatality Analysis Reporting System and the General Estimates System). Attachment 2 hereto is a copy of the cover, table of contents, and explanation of this data base from a representative NHTSA publication that reports traffic statistics, *Traffic Safety Facts 1996: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and theGeneral Estimates System*, (December 1997).

words, on more than 1,000 miles of Minnesota's roadways over the next one to two years, telecommunications-related work in the ROW will introduce a non-trivial safety risk to motorists and work crews.

In the early 1990's, as emphasis on the construction of new roads decreased, state DOTs began to employ information technologies on their roadways, including limited access highways, to improve their management and safety. As this trend accelerated, state DOTs began to require their own communications network on the roads to utilize these information technologies, which included closed circuit television systems, traffic monitoring devices, programmable message signs to inform travelers, and other communications-intensive equipment.

During this time, the telecommunications industry was undergoing a major expansion in products and services, technological advancements, and a proliferation of new entities. Missouri in 1994 decided to try to gain the benefits of these developments for its citizens by offering use of the ROW on its restricted access roadways to the telecommunications industry in exchange for telecommunications capacity. With this capability, the state DOT would be able to install and extend its traffic management and related services without placing additional demands on taxpayers, demands that would be inevitable if it had to install such capability itself. Missouri also thereby obtained an important additional benefit for its rural population: access to wide-band service that comes with the installation of fiber optic cable along 2,000 miles of Missouri roads. Physical access to the affected ROW for telecommunications purposes was limited to the single firm chosen by Missouri after a competitive process. Through this arrangement, therefore, although it preceded enactment of the Telecommunications Act of 1996, Missouri advanced interests specifically protected by section 253: universal service and the public safety and welfare. 47 U.S.C. § 253 (b), (c). Thus was born the concept of the "Shared Resources" project.

For the past ten years states have debated whether to allow this kind of heretofore forbidden access to their highway systems. The debate has taken place, and continues, not because of doubts about the ability of modern communications technology to serve the public interest, but because of the millions of accidents that occur on the nation's highways each year, and the established fact that the presence of construction vehicles and personnel on the rights-of-way of these roads unfortunately results in additional accidents, injuries, and deaths. [3]

Because of the safety issue, it was not until six years after FHWA's change in federal policy that the American Association of State Highway and

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[3]/ From 1988 to 1996 approximately 6.8 million vehicular accidents occurred nationwide each year. *Traffic Safety Facts 1996, supra,* at 14.

Transportation Officials ("AASHTO") agreed that opening the ROW on limited access highways for telecommunications purposes could be appropriate.[4] Even then, AASHTO would limit access to fiber optic cable because its very low maintenance requirements minimize the need for repeated physical access. Twenty-four of the fifty states have now altered their policies to allow telecommunications to be installed on the ROW of their limited access highways in some circumstances.[5] However, twenty-six other states still consider that such access, even carefully controlled, compromises safety to an unacceptable degree, and continue to forbid it.

These facts alone demonstrate that safety is not a minimalist factor in state decisions to allow access to the ROW on their limited access highways. They also suggest that a plausible consequence of a decision in this proceeding forcing states to allow greater physical access would increase the safety risk to a point that states are not prepared to accept in return for ITS or telecommunications capability.[6]

FHWA's comprehensive relationship with state DOTs, and its role in ROW management in particular, allow us to confirm that this concern is a real one. Shared resource arrangements that provide wide-band telecommunications capacity throughout a state are by design long-term projects that take years to complete. During that time a state DOT has agreed to incur an additional safety risk beyond that which would otherwise exist. Although it is true that this risk is small in some conditions or for some segments of these projects, that fact remains that there will almost certainly be more accidents. Dramatically shortening the period of access controls or requiring relatively frequent reopening of telecommunications trenches in the ROW to install more infrastructure would make it more likely that there would be construction on limited access highways somewhere in a state for an extended period, with concomitant increased safety exposure. It is our considered view that such an outcome would be unpalatable to most states, which could retain or revert to prior policies forbidding access altogether to affected rights-of-way. The result in that case would be a reduction

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[4]/ AASHTO is the organization of all fifty state DOTs; it sets standards for the construction and operation of the nation's highway system that FHWA often adopts as federal regulations. *See, e.g.*, 23 C.F.R. § 625.4.

[5]/ *See* the March, 1999 draft *Resource Sharing, State by State Status Report* submitted to the FCC with our *ex parte* letter to this docket dated March 5, 1999.

[6]/ We must stress that Minnesota and most, if not all, other states are controlling physical access, not the number of telecommunications providers that may use these rights-of-way. Contrary to the MTA letter (at 3), they are not "granting [telecommunications] monopolies."

in opportunities for telecommunications companies, increased state DOT expenditures for ITS purposes, and deferral of benefits to rural residents.

Finally, the Commission should be mindful that it is only the benefits to be obtained from telecommunications services that advance its basic mission that drive a state DOT to consider allowing access to this ROW in the first place. Those benefits have proven sufficiently attractive to approximately one-half of the states that they will permit physical access *under some circumstances.* Changing those circumstances may change the balance. It is not possible to quantify this potential; no one can predict that a state granting exclusive access for a period of, say, ten years would deny all access if this term were reduced to five years, or to two years. The Department has conducted no formal survey. But the Commission must be aware of the very real potential for loss of access to this specialized right-of-way, which would be detrimental to the both the traveling public and the telecommunications industry.

Analysis of Shared Resource Projects

This fundamental concern for safety, the time necessary to identify state needs and reach mutually acceptable resource sharing agreements, and other factors, have meant that shared resource projects have developed slowly. To date, there have been only five state DOTs that have consummated shared resource projects that involve granting access to the ROW on limited access highways in exchange for telecommunications goods and services. These, and four more that have been through the request for proposals ("RFP") process and are far enough along in negotiations to be useful, are considered in the attached Access Report. [7]

The nine shared resource projects contained in the Access Report can be instructive in analyzing the criteria for success in projects of this type for both the private providers of communications and the states. These nine are summarized in the Table below, and more detailed descriptions are contained in the attached Report.

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[7]/ There have also been two shared resource projects undertaken by state DOTs involving bridges, and six projects entered into by toll authorities; neither of these types of projects are included in the analysis. The former are omitted because of their extremely limited scope, the latter because toll road authorities are qualitatively different entities from state DOTs. They generate revenues directly from users, they are not under the control of state DOTs, and they generally do not have access to taxpayer funding (although in some circumstances federal monies may now be available to them). See *Program Guide, Utility Adjustments and Accommodation on Federal-Aid Highway Projects* (4th Ed., March 1998), FHWA Publication No. PD-98-013 at 54 – 55. DOT previously tendered this publication to the FCC. *Ex parte* letter dated March 5, 1999.

In seven of the nine projects contained in the Access Report, the states have managed the safety risk by maintaining close control of access to the pertinent ROW. This control has been achieved in two fundamental ways: by express contractual provision, and by the retention of discretion in the hands of the state . In the first category, three states (Missouri, Minnesota, and Virginia) have explicitly granted a period of exclusive physical access to the "winner" of a competitive RFP process. These states have agreed not to provide direct physical access to these highways to other telecommunications providers for the duration of the agreement, which varies from ten to forty years. However, in two of these (Minnesota and Virginia), the contractor is required to tender capacity to all other service providers at competitive prices; *i.e.,* to function as a telecommunications wholesaler.

The second approach to controlling access, used by four states (Colorado, Kansas, Maryland, and Washington), is to permit additional physical access to the pertinent ROW only during an initial "window of opportunity" and/or when the state issues another Request For Proposals, which is at the discretion of the state. [8] This approach has the same practical effect as the first, since the contractor and all interested parties know that states have a fundamental aversion to the safety threat posed by allowing construction on these ROWs, and the contractor can easily provide enough capacity to satisfy the public interest needs of the state DOT. The fundamental effect of both of these approaches is to provide the telecommunications contractor an economic incentive to agree to state conditions to install infrastructure in rural areas where there is little or no market incentive to do so.

The Table below, derived from the Access Report, reflects that of the nine shared resource projects actually or nearly executed to date, eight have achieved some rural coverage (as measured by mileage), and seven of the eight have employed one of these two forms of controlling ROW access. [9] Further, all of the projects include the major metropolitan area(s) within the state as the economic anchor(s) for the project.

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[8]/ Even then, a state DOT may do so only if *its* public interest needs (not those of private telecommunications providers) require additional capacity – as in the case of Kansas.

[9]/ Only Arkansas and Oklahoma have allowed truly open physical access to all companies, and in Oklahoma fiber optic cable has been installed only around the Oklahoma City metropolitan area.

Table

State	Miles Wired	Access Restriction
Missouri	2000	By Contract – 40 Years
Virginia	1300	By Contract – 20 Years
Minnesota	2000	By Contract – 10 Years
Colorado	1200	At State's Discretion
Maryland*	380	At State's Discretion
Washington*	690	At State's Discretion
Kansas*	700	At State's Discretion
Arkansas*	450	Unrestricted Access
Oklahoma	88	Unrestricted Access

* Shared resource projects currently in negotiation.

Conclusion

The Department urges the Commission to recognize two salient points from the above discussion and data. First, states would not have even considered allowing telecommunications companies to have access to the ROW on limited access roadways if the states had not already concluded that they needed to install contemporary telecommunications capability along the ROW in order to meet growing congestion, environmental, and safety concerns. State DOTs, in other words, had already concluded that some increased safety risk, if properly managed, was warranted by pressing public needs. Proper management, in most cases, meant controlled access rather than continuous or frequently repeated incursions.

Second, if the telecommunications market could have justified the capital investment necessary to install fiber optic cable with wide-band capability in the rural areas of these states, the private sector would have done so using other ROW options that are available, and that have traditionally been used by the industry. [10] It is the relatively recent availability of ROW on restricted access

[10]/ Such alternatives include use of railroad rights-of-way and the ROW along public roads that are not limited access (which is generally available simply for the payment of permitting fees). Some companies have apparently used these means. *See* MTA letter at 4.

roadways that has spurred the accelerated extension of contemporary telecommunications services to these areas.

The conclusion to be drawn from this information, in DOT's view, is that to hasten broad geographic coverage for the general populace and for ITS and other transportation activities, and to meet longstanding safety concerns, some form of significant control on physical access to the pertinent right-of-way is likely necessary and appropriate. Section 253 of the Telecommunications Act specifically protects these interests in the management of public rights-of-way.

Respectfully submitted,

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May 21, 1999

Ms. Magalie R. Salas
Secretary, Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket 98-1
Ex Parte Filing

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206(b)(1), enclosed herewith are the original and two copies of the Supplemental Comments of the U.S. Department of Transportation submitted for inclusion in the above-referenced docket. Enclosed as well is a computer diskette containing this document (in WordPerfect 5.x for Windows). Finally, I have included an additional five copies for distribution to the individual Commissioners. Please contact me if you have any questions.

Please date-stamp and return to the messenger the extra copy of the Supplemental Comments. Thank you for your assistance in this matter.

Sincerely,

Paul Samuel Smith

Paul Samuel Smith
Senior Trial Attorney
(202) 366-9285

Enclosures

cc: Claudia Pabo
David Kirschner
All parties

ATTACHMENT 3

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

Part VI
Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.

Part VI of the Manual on Uniform Traffic Control Devices (MUTCD)

1988 Edition of MUTCD, Revision 3
September 3, 1993

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Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

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