

September 4, 2020

U.S. Department of Transportation
Dockets Management Facility
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

Subject: Broadband Infrastructure Deployment (Docket No. FHWA–2019–0037)

To the U.S. Department of Transportation:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on the U.S. Department of Transportation’s (USDOT) “Broadband Infrastructure Deployment (Docket No. FHWA-2019-0037),” issued on August 13, 2020. Representing all modes of transportation in the 50 states, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between state departments of transportation (state DOTs) and the federal government.

The Notice of Proposed Rulemaking (NPRM) proposes to implement the provisions of MOBILE NOW, included in the Consolidated Appropriations Act, 2018, related to broadband deployment. AASHTO members appreciate continued Congressional interest in the development and support of broadband infrastructure deployment—especially during the current COVID-19 pandemic. While state DOTs do not object to the stated objective to expand broadband deployment, it is important that Congress and USDOT understand the appropriate and limited role that state DOTs play in this area.

AASHTO members are strong supporters in the need for additional infrastructure investment across the country, but these investments must be designed to efficiently target limited resources while not creating undue burden, costs, nor additional and unnecessary bureaucracy. Federal regulations should recognize that each state DOT is unique and “one size fits all” regulations often fail to provide the necessary flexibility to adequately address federal mandates.

It is through this lens that AASHTO welcomes the opportunity to provide comments related to the five new federal requirements included in the NPRM.

Section 645.307(a)(1) – Identification of a broadband utility coordinator

The MOBILE NOW provisions require each state to identify, in consultation with appropriate state agencies, a broadband utility coordinator. The NPRM clearly states that the “(t)he primary burden of this provision is imposed on States” and the ability to adhere to this requirement will vary from state to state. Given that no additional resources were provided to state DOTs as part of the Consolidated Appropriations Act, 2018, or as part of any federal legislation, this is an

unfunded mandate imposed upon state DOTs. The NPRM states that the duties of the broadband utility coordinator will take 30 percent of the employee's time. Based on the practical experience of state DOTs, the actual time commitment of this individual will vary dramatically between the various states. It is likely that the prescribed duties of the identified broadband utility coordinator would take much more than the estimated 30 percent. In order to recognize the differences of each state, AASHTO would suggest additional language be added to the NPRM: "The FHWA expects that the duties of a broadband utility coordinator will be commensurate with the size and intricacy of the individual state's utility program, which may require anywhere from minimal to full-time attention."

Section 645.307(a)(2) – Registration process for broadband infrastructure entities

Expanded deployment of broadband infrastructure is currently being supported by several states, including with the assistance of state DOTs. These states have developed processes and procedures for registering and providing relevant information to broadband infrastructure entities. In some instances, such efforts to register and provide relevant information are controlled through state agencies other than the state DOT. While recognizing that the provisions of MOBILE NOW require the establishment of a "process for the registration of broadband infrastructure entities," AASHTO would seek additional flexibility and acknowledgement of existing state registration processes and procedures. Specifically, AASHTO proposes that the final rule not require the establishment of a new registration process in those states where such a process already exists and rather would request that state DOTs "*ensure that there is* a registration process for broadband infrastructure entities...".

This change would allow states to rely on existing processes, avoid unnecessary duplication of effort and limit the wasteful expenditure of limited state resources.

Section 645.307(a)(3) – Notification of broadband infrastructure entities

Similar to the comment in (a)(2) above, in deference to existing state processes, in lieu of, "...establish a process for electronically notifying broadband infrastructure entities...", AASHTO would propose the final rule require state DOTs to "...*ensure that there is* a process for electronically notifying broadband infrastructure entities...". Again, this change would allow the States to rely on existing processes, avoid unnecessary duplication of effort and limit the wasteful expenditure of limited state resources.

Section 645.307(a)(4) – Coordination of broadband deployment initiatives

AASHTO anticipates some possible difficulties resulting from a lack of jurisdiction and control over the activities of other state agencies and/or local public agencies to obtain or have ready access to documents such as local land use plans. AASHTO would appreciate additional clarification on this point from FHWA. Specifically, regarding the implementation of "...consultation with appropriate state agencies..." and the expectation of formality, frequency, and decision-making authority. We would prefer that the state DOTs would have the ultimate control and authority regarding the utilization of the right of way for such purposes.

Section 645.307(b) – Requirements related to existing broadband entities

There is concern that the NPRM may conflict with 23 CFR 710.403 in some states. Any requirements that limit fees to a cost-based system will eliminate a state DOT's ability to effectively negotiate for in-kind services, which may be necessary to achieve the goal of

broadband connectivity. Additionally, the NPRM could create a system whereby the publicly subsidized conduit is now undercutting the private telecommunications market. This could disadvantage private industry and their investment in proximate broadband networks. There are at least twenty-two states with some form of state statutes that prohibit governmentally run networks, which could create government-funded competition or a disparity between broadband infrastructure entities that provide service through a different means.

Section 645.309 – No federal installation requirements

AASHTO strongly concurs with FHWA’s understanding of the MOBILE NOW Act that, ...” nothing in Part 645, Subpart C, requires that a State install or allow the installation of broadband infrastructure in a highway ROW...”.

To conclude, MOBILE NOW created the requirement for additional duties to be administered without providing any additional resources to state DOTs to implement the provisions. The extent of the burdens will be directly dependent upon the nature and complexity of the individual state’s utility program, and the extent to which the State has already established staffing in the same or similar capacity. Providing additional flexibility in the implementation of the MOBILE NOW provisions as requested in these comments to the NPRM will allow states DOTs to quickly capitalize on work and efforts that have already been undertaken related to broadband deployment and will minimize or eliminate unnecessary additional bureaucracy.

Thank you for the opportunity to provide comments to the NPRM. We look forward to our continued partnership with USDOT and FHWA.

Respectfully,



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