

# WEST VIRGINIA DIVISION OF HIGHWAYS GUIDANCE ON IMPLEMENTING THE DIG ONCE POLICY

OCTOBER 4, 2018

The West Virginia Legislature has found that it is in the public interest to accommodate telecommunications facilities on West Virginia Division of Highways (Division) right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public; impair the highway or its aesthetic quality; or conflict with any federal, state, or local laws, rules, regulations, or policies. Also, the Legislature has found that a broadband connection is an essential part of developing the state and local economies, enhancing the transportation system and creating a safer and more secure environment for the citizens of West Virginia. As such, instituting a “dig once” policy encourages telecommunications carriers (carrier) to coordinate the installation of broadband conduits to minimize costs to the carriers and to minimize disruption and inconvenience to the traveling public.

Guidelines have been developed by the Division and the West Virginia Broadband Enhancement Council (Council) to assist in the submission, processing and enforcement of a carrier’s desire to install, extend, expand, or upgrade its existing longitudinal underground fiber optic network or wireless telecommunications facility within the Division’s rights-of-way (R/W). As depicted in the legislation, the following definitions are to be enforced throughout these guidelines, unless otherwise noted:

- (1) “Broadband conduit” or “conduit” means a conduit, innerduct or microduct for fiber optic cables that support facilities for broadband service.
- (2) “Broadband service” has the same meaning as defined in W. Va. Code §-31G-1-2.
- (3) “Council” means the Broadband Enhancement Council.
- (4) “Division” means the Division of Highways.
- (5) “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.
- (6) “Permit” means an encroachment permit issued by the Commissioner of the Division of Highways under the authority of this Code, and pursuant to the “*Accommodation of Utilities On Highway Right Of Way and Adjustment and Relocation Of Utility Facilities On Highway Projects Policy*”, or equivalent policy, as currently enforced by the Division that specifies the requirements and conditions for performing work in a right-of-way.
- (7) “Right-of-way” 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.

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- (8) “Telecommunications carrier” means a telecommunications carrier:
- (A) As determined by the Public Service Commission of West Virginia; or
  - (B) That meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §-153.
- (9) “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.
- (10) “Utility facility” or “Utility” has the meaning ascribed to it in W. Va. Code §-17-2A-17a.
- (11) “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

These guidelines are applicable to all underground technologies (trench and trenchless, such as, but not limited to, directional drilling and microtrenching) for longitudinal installations, extensions, expansions or upgrades (including crossings) within the Division’s R/W. For this guideline, the mention of “trench” is to include all trenchless technologies. Aerial installations may be included as part of an application for underground installations; however, aerial installations are not subject to the Dig Once provisions.

1. A carrier shall submit, to the Division’s respective District, a Permit Application for the longitudinal Installation, Extension, Expansion or Upgrade of underground fiber optic network, or wireless access within the Division’s R/W. A list of the Division’s Districts and their respective contact information can be found on the Division’s website at <https://transportation.wv.gov/highways/districts/Pages/default.aspx> . At a minimum, the following information shall be required:
  - A. A complete Application (MM-109) with Contact Information (Name, Mailing Address, Phone Number, Email Address) for the carrier’s representative authorized to process agreements on behalf of the carrier.
  - B. Plan View (.pdf, .kmz, or .dgn format), Profile View, Cross Sections (if applicable) which indicate the proposed underground fiber optic installation, extension, expansion or upgrade.

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- C. Details, such as but not limited to, Description of Work including the type 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.
  - D. Coordinates of the begin and end points, for each segment, for the installation of the underground fiber optic network.
  - E. Inspection Fees and Bond, as applicable.
  - F. Completed Submission Checklist. A copy of the checklist is attached (See Appendix A).
2. Upon submission of the Permit Application to the Division, the carrier will notify the Council of the Application, by email at the following address [WVBroadbandCouncil@wv.gov](mailto:WVBroadbandCouncil@wv.gov). The carrier shall include a complete copy of the Permit Application in its notification email to the Council, including the MM-109 Application and all of the information listed in Section 1 above. Upon receipt of the notification, the Council will provide the applicant carrier with a list of other carriers to notify of the proposed project. See Appendix B for an example notification to the Council and other carriers. The other carriers will have 30 calendar days, beginning on the date of the email notification to the other carriers, to notify the applicant carrier if they wish to share the applicant carrier's trench. This requirement extends to all underground construction technologies. The carrier shall also meet the following conditions for a permit:
- A. The applicant carrier will be required to place, at its sole expense, a Class II legal advertisement, in accordance with W. Va. Code §-17-2E-5 and W. Va. Code §-59-3-2(a), in a form and content approved by the Division, in the local project area newspaper, in the Charleston newspaper, on industry and the Division's websites (the Division's web address is <https://transportation.wv.gov/highways/engineering/DigOnce/Pages/Forms.aspx>), and in other pertinent media, announcing the general scope of the proposed installation within the R/W and providing other carriers the opportunity to timely express an interest in installing additional telecommunication facilities during the initial installation. The legal advertisement is to run at least two (2) consecutive weeks, and the applicant carrier is to notify the Division of any interest of other parties received. An example of the legal advertisement with approved format and content is attached (See Appendix C).
  - B. If one or more carriers express interest in participating in the project, an agreement between the carriers will be executed by those entities, outlining the responsibilities and financial obligations of each, with respect to the installation within the R/W. A

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- copy of the executed agreement shall be provided to the Division prior to the issuance of a permit to begin the installation.
- i. The Applicant Carrier is responsible for resolving, in good faith, all disputes between any carriers that responded timely to the advertisement and that wish to install facilities within the same portion of the rights-of-way. Any dispute that is not resolved by the carriers shall be adjudicated by the Public Service Commission of West Virginia.
  - ii. If two or more carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.
3. At the conclusion of the 30-day public notification period and after the negotiations with other carriers, if applicable, the applicant carrier will submit to the respective District copies and proof of all notifications, including those to the Council and the other carriers, a copy of any executed agreement with other carrier(s), and a copy of a notarized Dig Once affidavit (See Appendix D for sample affidavit) along with an updated Submission Checklist. The applicant carrier will also submit a copy of the Dig Once affidavit to the Council.
  4. The responsible District or Districts shall review the application for completeness and accuracy.
  5. Before the issuance of a permit for the construction or installation of a telecommunications facility within the Division's R/W, a carrier must enter into an agreement with the Division consistent with the requirements of the law and this guidance. An example of the agreement is attached (See Appendix E).
    - A. The Division shall:
      - i. Enter into an agreement with the applicant carrier that is competitively neutral and nondiscriminatory as to other carriers. The agreement shall be approved by the Commissioner of Highways in order to be effective. When applicable, the applicant carrier shall compensate the Division for access to a R/W for the construction, installation, and maintenance of telecommunication facilities, and the use of spare conduit or related facilities of the Division as part of any longitudinal access or wireless access granted to a R/W pursuant to the law. The compensation must be, without limitation:
        1. At fair market value (as determined at the time of the application);

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2. Competitively neutral;
  3. Nondiscriminatory;
  4. Open to public inspection;
  5. Calculated based on the geographic region of this state, taking into account the population and the impact on other R/W users in the region; and once calculated, set at an amount that encourages the deployment of digital infrastructure within this State;
  6. Paid in monetary compensation or with in-kind compensation, or a combination of monetary compensation and in-kind compensation; and
  7. Paid in a lump-sum payment or in annual installments, as agreed to by the carrier and the Division. Payments in annual installments will be subject to fair market value recalculations every 5 years.
- ii. The agreement shall:
    - a. Specify the terms and conditions for renegotiation of the agreement;
    - b. Set forth the maintenance requirements for each telecommunications facility;
    - c. Be nonexclusive; and
    - d. Be for a term of not more than 30 years.
- B. The Division may consider adjustments for areas, the Division, in conjunction with the Council, determines are underserved or unserved areas of the state. The value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine may be considered in determining value.
- C. For the purpose of determining the amount of compensation a carrier must pay the Division for the use of spare conduit or excess conduit or related facilities of the Division as part of any longitudinal access or wireless access granted to a R/W, the Division shall:
- i. Conduct an analysis once every five years, in accordance with the rules, policies, and guidelines of the Division, to determine the fair market value of a R/W to which access has been granted pursuant to this section; and
  - ii. If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.

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- F. The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division would charge if the compensation were paid solely with money.
  - G. If the Division plans to use the trench, it shall pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way.
6. Unless specifically provided for in an agreement entered into pursuant to W. Va. Code §-17-2E-3(a), the Division may not grant a property interest in a R/W pursuant to the law or this guidance.
  7. The notarized signature of the District Engineer/Manager or his or her designee must be affixed to the agreement prior to sending the agreement to the applicant carrier.
  8. If acceptable, the applicant carrier will Sign and have the agreement Notarize and return to the District Utility Supervisor along with the first Agreement payment. The District Utility Supervisor will process the first payment per the Division's accounts receivable policies. A copy of the Agreement will be retained at the District; the original Agreement will be sent to the Division's Right-of-Way Division.
  9. The District shall issue a permit granting access under the law and this guidance; provided, that the Division complied with all applicable federal regulations with respect to approval of an agreement, including but not limited to 23 C.F.R. §-710.403 and 23 C.F.R. §-710.405.
    - A. The District will scan and add the Agreement and Permit to ProjectWise.
    - B. The District will send a copy of Agreement and Permit to the Division's Engineering Division/Utilities to the Council.
  10. The carrier will coordinate its work with the District.
    - A. The carrier will contact the District Utility Supervisor a minimum of 48 hours prior to construction.
    - B. The District will inspect the work performed by the carrier within the Division's R/W.
    - C. The District will release Bond per permit requirements.
  11. 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.

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12. The Division, in its sole discretion, may deny any longitudinal access or wireless access if such access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.
  
13. 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 "*Accommodation of Utilities On Highway Right Of Way and Adjustment and Relocation Of Utility Facilities On Highway Projects Policy*".

APPENDIX A

**Utility Dig Once Application Submission Checklist**

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

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

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 (Submitted to WVDOH’s respective District and Broadband Enhancement Council)
    - MM109
    - 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.
    - Coordinates of begin and end points for each segment.
    - Inspection Fees and Bond (if applicable).
  - b. Notifications by Applicant Carrier
    - Broadband Enhancement Council and other carriers on record (copies to Council by email)
    - Legal Advertisements (Must comply with W. Va. Code §-17-2E-5 and W. Va. Code §-59-3-2(a))
      - Local Project Area Newspaper
      - Charleston Newspaper
      - Industry Website
      - WVDOH Website
      - Other Pertinent Media
2. Post announcement submission to District by Applicant Carrier (except where noted)
  - Agreement with other carriers, if applicable
  - Copies/receipts of all Notifications
  - Notarized Dig Once Compliance Affidavit
3. Finalize Application
  - Process WVDOH Agreement
  - 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

# Notification to Broadband Enhancement Council and Other Carriers on Record

**DATE:**

**TO:** Other Carriers (Email List Provided by Broadband Enhancement Council)

**FROM:** Applicant Carrier Company Name and Address

**RE:** Notification of Permit Application Pursuant to WV Dig Once Policy, W. Va. Code §-17-2E-1 *et seq.*

In compliance with West Virginia Code §-17-2E-5(b), <Applicant Carrier> provides notification of the following project:

- 1. Location: Include county, city, route number or street location.**
- 2. DOH District Office: District Number, Address, Phone, Contact.**
- 3. Project Description: Include description and map of project area.**
- 4. Project Details: Include technology, coordinates, linear feet, map, type and size of conduit, method of installation, depth and other applicable information.**

As required by the Dig Once Policy § 17-2E-5(b), other carriers have 30 days from the date of email notification to notify <Applicant Carrier> if they wish to share the trench.

If you have any questions concerning this notification, please contact me at: <Applicant Carrier Representative's contact information, title, signature line, including name, address, telephone number, email address>.

cc: WVBroadbandCouncil@wv.gov.

**APPENDIX C**  
**Dig Once Legal Advertisement Template**

*(ad to be run in local newspaper(s) and others in accordance with W. Va. Code §-17-2E-5)*

<Applicant Company> will be constructing approximately <length> of longitudinal underground fiber optic network or wireless telecommunications facilities using West Virginia Department of Transportation (WVDOT) rights-of-way along <Road Name > at <Closest Town>, WV. This placement will specifically be along <Route Number>. <Applicant Company> will make fair and reasonable accommodations to share construction costs with other telecommunications providers if such providers elect to place underground facilities along these same rights-of-way during construction. Other providers also will be required to obtain from the WVDOT approval of appropriate plans and obtain permit for occupancy of WVDOT rights-of-way regarding the installation. Construction is anticipated to begin in <Construction Start Date> and be completed in <Construction End Date>. Interested parties should contact <Applicant's Responsible Employee> with <Applicant Company> at <Phone Number> or <Email Address> no later than <Date> (must give 30 days per W. Va. Code §-17-2E-5). Providers timely responding to this notice will coordinate with <Applicant Company/Responsible Employee>, and with WVDOT as appropriate, to address trench sharing and costs and issues pertaining to the installation.

**[INCLUDE WITH AD A LOCATION MAP CLEARLY IDENTIFYING  
ROUTE(S)/INSTALLATION AREA]**

**APPENDIX D**

**DIG ONCE COMPLIANCE AFFIDAVIT**

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, to-wit:

[AFFIANT], upon being first duly sworn, deposes and says:

1. I am currently employed by [COMPANY] as the [TITLE]. As part of my duties in this position, I am responsible for reviewing and submitting the installation permit applications with the West Virginia Department of Transportation, Division of Highways (the “Division”) for placing underground fiber within the Division’s right-of-way.

2. As the [TITLE], I have express authority to represent [COMPANY].

3. [COMPANY] is a telecommunications carrier, as defined in W.Va. Code §-17-2E-2(8).

4. On or about [ \_DATE\_ ], [COMPANY] filed the installation permit application with the Division.

5. On or about [ \_DATE\_ ], [COMPANY] completed or has otherwise fully satisfied the applicable public notice and competitor agreement requirements found in W. Va. Code §-17-2E-5.

6. Following the notice discussed in paragraph 5 above, one of the following applies:  
[ ] [COMPANY] did not receive any notifications from competing telecommunications carrier(s) expressing interest in participating in the installation project.

[ ] [COMPANY] was notified by competing telecommunications carrier(s) of their express interest in participating in the installation project and [COMPANY] and the other telecommunications carriers have entered into a written agreement outlining the responsibilities and financial obligations of each, with respect to the installation within the Division’s right-of-way. A copy of the executed agreement has been provided to the Division.

And further this Affiant saith not.

\_\_\_\_\_  
[AFFIANT]

Taken, subscribed, and sworn to before me, the undersigned Notary Public, this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires on \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

APPENDIX E

Telecommunications Agreement

PM Number: \_\_\_\_\_

Permit Number: \_\_\_\_\_

THIS TELECOMMUNICATIONS AGREEMENT, made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, (the “Division”), and \_\_\_\_\_, a \_\_\_\_\_ (“Carrier”).

WHEREAS, Division is the owner of certain land, property, or other interests in real property used for transportation purposes (the “Right-of-Way”);

WHEREAS, Carrier desires to install underground telecommunications facilities within a section of the Right-of-Way, as more fully described below, which will not interfere with the purpose and use for which Division acquired the same and Division is agreeable to permit Carrier to utilize a section of the Right-of-Way on the terms and conditions herein; and,

WHEREAS, Division has the authority to enter into a Telecommunications Agreement by the provisions of W. Va. Code §-17-2A-17a and W. Va. Code §-17-2E-3.

NOW, THEREFORE, WITNESSETH:

That for and in consideration of One Dollar (\$1.00) and subject to the terms and conditions herein contained, Division does hereby permit Carrier the right to use a portion of that certain tract or parcel of land for underground telecommunications facility installation as depicted on the plat attached hereto as Exhibit A and made a part hereof, hereinafter referred to as “Installation Route.” Division expressly reserves the right to occupy the Installation Route jointly with the Carrier and the right to permit other telecommunications carriers to do so as well.

This agreement is subject to the following terms and conditions:

1. Purpose – The Installation Route shall be used solely for the installation and operation of telecommunication facilities, as defined by W. Va. Code §-17-2E-2(9).
2. Term – This Telecommunications Agreement is for a term of \_\_\_\_\_ (\_\_\_\_) years [may not be less than five (5) nor more than thirty (30) years] commencing on the date above. Nothing contained herein prevents the Division from immediately removing any installation which creates a hazard to public safety or impedes the use, construction, or maintenance of any roadway. It is expressly understood that this Telecommunications Agreement does not grant a property interest in the Right-of-Way to Carrier.
3. Fair Market Value – Beginning June 8, 2018, Division will evaluate and establish the fair market value of the use of the Right-of-Way every five (5) years, based upon then-existing market conditions; provided, however, that the Legislature may sooner establish fair market value by statute, and such legislative action establish fair market value for the purposes of this Agreement.

4. Use of the Installation Route - Carrier shall use the Installation Route in compliance will all applicable laws, rules and regulations. Carrier shall not do or permit any act to be done, or create any situation by failure or refusal to act, that:
  - a. does or may impair the value of the Installation Route in whole or in part;
  - b. creates an unreasonable risk of harm to third persons or premises on or off the Installation Route; or
  - c. constitutes a public or private nuisance or waste to the Installation Route.
  
5. No Warranty – The Division makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the Installation Route or its fitness for any purpose, including the intended purposes of the Carrier hereunder.
  
6. Risk of Loss – The Carrier shall bear the entire risk of loss and damage to its facilities located within the Installation Route from any cause whatsoever. No loss or damage to the Installation Route or any part thereof shall impair or lessen any obligation of the Carrier under this Telecommunications Agreement which shall continue in full force and effect. In the event of loss or damage to the Installation Route as a result of action or inaction on the part of the Carrier, the Carrier shall restore the Installation Route to the same condition that existed before the loss or damage to the satisfaction of the Division.
  
7. Compensation – The Carrier shall pay to the Division the sum of One Dollar (\$1.00) for the first five (5) years of the term hereof, but thereafter, the annual compensation will be adjusted to the then Fair Market Value as described in Paragraph 3 herein. Such payments shall be remitted, in advance, to Finance Division, West Virginia Department of Transportation, Division of Highways, State Capitol Complex, Building 5, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0430, upon receipt of invoice.
  
8. In-kind Compensation – Only Telecommunications Carriers, as defined in W.Va. Code §-17-2E-2, may provide in-kind compensation for a Telecommunications Agreement. The in-kind compensation to be made by a Carrier under this Telecommunications Agreement in a manner detailed below. [If no in-kind compensation is offered, please leave this section blank or mark “N/A.”]
 

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9. Arrearage – Any Telecommunications Agreement, with compensation payments more than thirty (30) days in arrears, shall be considered an obstruction by Division under W. Va. Code §-17-16-1, *et seq.*
  
10. Dig Once Compliance Affidavit – On or prior to the date of this agreement, Carrier must complete and submit a Dig Once Compliance Affidavit to Division.
  
11. Conditions and Restrictions – Carrier understands and agrees that the Installation Route is subject to the following covenants and restrictions:
  - a. No flammable, volatile or explosive substances, hazardous materials, lumber, wood products or other material, which does or may constitute a fire or other hazard or cause damage to third persons or property on or off the Installation

Route or cause contamination of property on or off the Installation Route may be used, manufactured, stored or held thereon. The foregoing notwithstanding, it is understood and agreed that certain utility providers, such as natural gas utilities, will transport materials or substances via their facilities located within the Installation Route which are flammable or explosive, but such use of the Installation Route is not intended to be prohibited by this provision.

- b. No signs, including advertising poster or devices, shall be permitted on the Installation Route.
- c. No hazardous or objectionable smoke, fumes, vapor or odors shall be discharged from the Installation Route.
- d. The Carrier accepts this agreement subject to any and all easements and encumbrances, including without limitation, existing utility lines, whether or not visible upon the ground.

12. Improvements – Carrier may improve the Installation Route by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

13. Relocation – It is understood and agreed between the parties hereto that, upon termination of this agreement, Carrier is not eligible for relocation monies and is not a “displaced person” as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 49 CFR 24.2(a)(9). Carrier’s installation, within the Installation Route, shall be relocated, adjusted or removed by the Carrier, at no cost to the Division, when required for highway improvements, unless the provisions of W. Va. Code §-17-4-17b or §-17-4-17d apply.

14. Indemnification – To the fullest extent permitted by law, Carrier at all times does, and shall, assume all risks of damage to its property, and the property of others, and injury or death to all persons (including, but not limited to, any employee or agent of Carrier or sub-lessee) resulting directly, or indirectly or otherwise by (a) the actions of omissions of Carrier, its contractors or sub-lessee, or their respective agent and employees, (b) by any condition of the property, (c) by any failure of Carrier, its contractors or sub-lessee, or their respective agents and employees, to comply with any applicable law, rule, regulation or order of any governmental authority, or to comply with any provision of this Telecommunications Agreement, or (d) by any other cause related to Carrier’s performance hereunder. Carrier at all times hereby fully assumes the risk of and shall defend, indemnify and hold harmless the Division, its officers, employees and agents (the Division and such persons collectively "Division’s Indemnified Persons"), and shall reimburse Division’s Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage, cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against the Division’s Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of Carrier’s work and services, or other activities performed hereunder. These covenants of indemnity shall survive cancellation, termination, or expiration of this Telecommunications Agreement, Carrier hereby acknowledges that the allocation of risk set forth in this provision of the Agreement is a part of the consideration to be provided to Division by Carrier for performance of this Agreement.

15. Insurance - Carrier shall be required to furnish evidence of having at least the minimum amounts of insurance required under Section 103.6 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, as Adopted 2017," and supplements thereto, and include the West Virginia Division of Highways as an additional insured on all policies of insurance required, except for worker's compensation. Any insurance required to be carried shall be primary, and not excess to any other insurance. Carrier shall require all sub-lessees to furnish evidence of having at least the minimum amounts of insurance required under Section 103.6 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, as Adopted 2017," and supplements thereto, and include West Virginia Division of Highways as an additional insured on all policies of insurance required, except for worker's compensation. Any insurance required to be carried shall be primary, and not excess to any other insurance.
16. Assignment – This agreement may not be transferred, assigned or sublet, in whole or in part.
17. Possession – The Carrier shall have a non-exclusive right to locate certain facilities within the Installation Route, subject to the rights of the Division reserved herein, and shall have sole responsibility for maintenance, operation and use of its facilities.
18. Nondiscrimination – The Carrier, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person, on the grounds of race, religion, color, sex, national origin, or disability shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the use of the Installation Route or facilities thereof; (2) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors; (3) that such discrimination shall not be practiced against the public in accommodations constructed or operated within the area of said Telecommunications Agreement; and (4) that the Carrier shall use the Installation Route in compliance with all other requirements imposed by the Department of Transportation pursuant to Title 49, Code of Federal Regulations, Part 21, and as said regulations may be amended. That, in the event of breach of any of the above nondiscrimination covenants, if the Division has given the Carrier thirty (30) days written notice of an alleged breach and the Carrier has failed either to cure the breach or to take appropriate steps to prevent reoccurrence, the Division shall have the right to terminate this agreement and to reenter and repossess the Installation Route area and hold the same as if said agreement had never been made or issued.
19. Inspection and Maintenance – The Division reserves to itself the right to enter upon the Installation Route at any time and without notice for purposes of inspection and determination of compliance with the terms hereof, and for any necessary maintenance, repair, construction or reconstruction of its adjacent highway facilities. Division, in the conducting of such maintenance, repair, construction or reconstruction, shall have, to the extent reasonably necessary, the right to cause the interruption or suspension of the Carrier's operations on said Installation Route and may damage or alter the Carrier's improvements thereon, with no liability to the Division.
20. Termination – The Division reserves the right to terminate this agreement at any time and for any reason or for no reason without liability to the Carrier by giving the Carrier a written notice of termination thirty (30) days before the effective date of the termination.



21. Surrender of Installation Route – At the termination or expiration of this Telecommunications Agreement, Carrier shall surrender the Installation Route to Division in as good a condition as when received by Carrier. Carrier shall also remove all Carrier’s fixtures, facilities, and equipment and repair any damage to the Installation Route occasioned by Carrier’s use.
  
22. Entire Agreement – This Telecommunications Agreement, as governed by applicable statutes and regulations, constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.
  
23. Time – Time is of the essence in the performance of this Telecommunications Agreement.
  
24. Governing Law – This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its choice of law principles.
  
25. Amendment and Waivers – Any term or provision of this Telecommunications Agreement may be amended, and the observance of any term of this Telecommunications Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

DIVISION:

WEST VIRGINIA DEPARTMENT OF  
TRANSPORTATION, DIVISION OF  
HIGHWAYS

By:\_\_\_\_\_

DISTRICT \_\_\_\_\_ ENGINEER/MANAGER

CARRIER:

\_\_\_\_\_

By:\_\_\_\_\_

Its:\_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, TO-WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, District \_\_\_\_\_, Engineer/Manager.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF WEST VIRGINIA;

COUNTY OF \_\_\_\_\_, TO-WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, on behalf of \_\_\_\_\_, a \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

First Payment received and Telecommunications Agreement Delivered on \_\_\_\_\_  
(this date is the effective date of the Telecommunications Agreement)

\_\_\_\_\_, Utility Supervisor  
District \_\_\_\_\_

This instrument was prepared by:  
West Virginia Department of Transportation,  
Division of Highways  
1900 Kanawha Blvd., E.  
Charleston, West Virginia 26305-0430