WEST VIRGINIA CODE CHAPTER 17 ARTICLE 2E

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§17-2E-1. Legislative findings.

(a) The Legislature finds that it is in the public interest to accommodate telecommunications facilities on Division of Highways right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public or impair the highway or its aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

(b) The Legislature further finds 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 our citizens.

(c) The Legislature further finds that expanding telecommunication facilities will allow the state to participate in the E-Rate Program of funding for digital education in America to provide reliable services opportunities for education and training.

(d) The Legislature further finds that fast, reliable broadband connections enhance telemedical opportunities for our rural doctors and hospitals, linking them to our major medical centers. Thereby overcoming distance barriers, and improving access to medical services that often are not consistently available in rural communities.

(e) The Legislature further finds that instituting a dig once policy encourages telecommunications carriers to coordinate installation of broadband conduit to minimize costs to the carriers and minimize disruption and inconvenience to the traveling public.

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§17-2E-2. Definitions.

In this article, unless the context otherwise requires:

(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 §31G-1-2 of this code.

(3) "Council" means the Broadband Enhancement Council.

(4) "Direct bury" means the burying of telecommunications wire or cable directly into the ground by means of plowing or direct insertion without the opening of a trench and without the installation of conduit or innerduct.

(5) "Division" means the Division of Highways.

(6) "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.

(7) "Permit" means an encroachment permit issued by the commissioner of the division 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 may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way and where such work involves the creation or opening of a trench for the installation of telecommunications facilities in a right-of-way.

(8) "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.

(9) "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.

(10) "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.

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(11) "Utility" has the meaning ascribed to it in §17-2A-17a of this code.

(12) "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.

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§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation; telecommunications facilities construction and installation in rights-of-way.

(a) If in-ground construction or installation of a telecommunications facility in rights-of-way owned or controlled by the division serves a public purpose and shall be accommodated as a utility pursuant to federal and state law, the division will receive applications and issue a permit consistent with this section with respect to requirements and conditions for performing work in division rights-of-way.

(b) Upon receipt of a complete application as specified in the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way, the division shall, within 60 business days, advise applicant in writing of any deficiencies with the planned project that:

(1) Adversely affect the safety, design, construction, operation, maintenance, or stability of the state road system;

(2) Interfere with or impair the present use or planned future expansion of any affected highway or bridge;

(3) Conflict with applicable division policy with respect to requirements and conditions for performing work in division rights-of-way; or

(4) Violates applicable federal or state law.

(c) An applicant may correct any deficiencies and resubmit the application, which shall be reviewed by the division and either approved or denied within 30 days of the resubmittal. Any denial of a resubmittal shall be in writing and explain any deficiencies as provided in subsection (b) of this section. After the division approves a permit application, notwithstanding any other provision of this code to the contrary, the division shall issue a specific district level construction authorization for the approved project within 10 business days unless specific logistical issues reasonably prevent commencement.

(d) Compliance with applicable environmental laws shall at all times be the responsibility of the applicant. If any environmental clearance must be performed by the division before an application is approved, the division will notify the applicant in writing of all necessary requirements for such clearance within 15 business days of receiving a complete application. The division will also provide a list of all known federal and state entities with whom an applicant may also need to consult and coordinate for environmental clearance purposes.

(e) The division will create and make available for potential applicants an informational notice specific to in-ground telecommunications facility construction and installation that

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explains routine issues for such projects, including a consolidated checklist or flow chart of all state or federal regulatory requirements, including but not limited to applicable permits, required reviews, required approvals, and required forms. The division shall annually update such informational notice for accuracy and completeness by coordination with each state or federal agency having required regulatory action in the permitting process legal, regulatory, and division requirements and may request the assistance of the Office of Broadband in preparing this informational notice.

(f) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

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§17-2E-4. Highway safety.

(a) The Division of Highways, 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.

(b) Any longitudinal access or wireless access to a right-of-way granted by the Division of Highways pursuant to this article 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 highways' rights-of-way and adjustment and relocation of utility facilities on highway projects.

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§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) Upon application for a permit, the applicant shall notify, by email, the Office of Broadband and all other telecommunications carriers on record with the office of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant's trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier provides notice of interest to share the applicant's trench within 15 calendar days of notice of the project, the applicant shall provide written certification in accordance with subsection (g) of this section.

(c) If a competing telecommunications carrier provides notice of interest to share the applicant's trench, an agreement between the two (or more) telecommunications carriers shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit or innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division uses a trench, it shall also pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined, in its sole discretion, that including the division in the apportionment of costs is not warranted. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier and a competing telecommunications carrier, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days.

(e) If two or more telecommunications 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.

(f) The provisions of this section do not apply to the following projects:

(1) Projects where the total continuous length of the trench is less than 1,000 feet;

(2) Projects that use the direct bury of cable or wire facilities;

(3) Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or

(4) Projects made available for lease to competing telecommunications carriers on a

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nondiscriminatory basis at rates established by the rules of the Federal Communications Commission Projects where the telecommunications carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is given to the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on the basis of the cost of the installation thereof, to other telecommunications providers, and the revenues derived from such sale, less any costs associated therewith, shall be remitted to the telecommunications carrier that installed such spare conduit or innerduct in a manner consistent with all applicable state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify the council and the Office of Broadband of the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

(g) The Office of Broadband is responsible for ensuring compliance with this section and will provide the division and the applicant with certification of compliance at such time as the applicant has met all of the requirements of this section.

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§17-2E-6. In-kind compensation.

[Repealed].

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§17-2E-7. Use of telecommunications facilities owned or controlled by Division of Highways.

The division may enter into an agreement and issue a permit consistent with the requirements of §17-2E-3 of this code to allow any carrier to use excess telecommunications facilities owned or controlled by the division: *Provided*, That this section shall be subject to the provisions of the Vertical Real Estate Management and Availability Act, as provided for in §31G-5-1 *et seq*. of this code, and no excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq*. of this code shall be governed by the provisions of this section.

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§17-2E-8. Disposal of in-kind compensation; excess telecommunications facilities.

Upon written approval of the Governor, the division may transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency.

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§17-2E-9. Rule-making authority.

The commissioner of the division may promulgate rules pursuant to the provisions of §29A-3-1 *et seq*. of this code as may be necessary to carry out the purpose of this article.

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§17-2E-10. Taskforce on infrastructure deployment clearinghouse; reporting; sunset date.

[Repealed.]

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