



September 14, 2020

VIA ELECTRONIC FILING

Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: CTIA Comments on Broadband Infrastructure Deployment Notice of Proposed Rulemaking, Docket No. FHWA-2019-0037, RIN 2125-AF92)

To the U.S. Department of Transportation:

CTIA¹ appreciates the opportunity to comment on the Notice of Proposed Rulemaking (“NPRM”) issued by the U.S. Department of Transportation’s Federal Highway Administration (“DOT” and “FHWA”) implementing Section 607 of the MOBILE NOW Act.² CTIA supports FHWA’s proposals and encourages FHWA to facilitate the development of polices that promote efficient deployment of broadband infrastructure in the public right-of-way (“ROW”).

Increased Coordination will Facilitate More Streamlined Deployment of Broadband Infrastructure and Is Consistent with the Administration’s Goals. In adopting Section 607 of the MOBILE NOW Act, Congress recognized the importance of facilitating the streamlined deployment of broadband infrastructure in the ROW.³ Specifically, Section 607 requires DOT to

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers and suppliers, as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, DC.

² *Broadband Infrastructure Deployment*, Notice of Proposed Rulemaking, FHWA-2019-0037-0001, RIN 2125-AF92 (Aug. 13, 2020); the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), Division P, Title VII (“MOBILE NOW Act”), Section 607, Broadband Infrastructure Deployment (47 U.S.C. 1504).

³ U.S. Senate Committee on Commerce, Science, & Transportation, *President Signs MOBILE NOW Act, Other Key Technology Bills into Law*, Press Release (Mar. 23, 2018), <https://www.commerce.senate.gov/2018/3/president-signs-mobile-now-act-other-key-technology-bills-into-law> (quoting Sen. John Thune, Chairman of the Committee on Commerce, Science, and Transportation, as stating that the provisions in MOBILE NOW will “mak[e] it easier to deploy the



ensure that states receiving Federal-aid highway funds identify a broadband utility coordinator to facilitate the broadband infrastructure ROW efforts within the state; establish a process to register broadband infrastructure entities that seek to be included in those facilitation efforts; establish a process to electronically notify such entities of the program on an annual basis; and coordinate statewide telecommunication and broadband plans and state and local transportation and land use plans, including strategies to minimize repeated excavations that involve the installation of broadband infrastructure in the ROW (also known as “Dig Once”).

Adoption of the NPRM’s proposals to implement these provisions will result in increased coordination between broadband infrastructure entities and state DOTs, and in turn, will minimize repeated excavations, reduce costs, and streamline deployment. These efforts to streamline and facilitate broadband deployment are consistent with the provisions of the MOBILE NOW Act, as well as the national priority to accelerate broadband deployment,⁴ and will complement the actions that other agencies—such as the Federal Communications Commission, the Forest Service, and the Advisory Council on Historic Preservation—have taken to streamline infrastructure deployment.⁵ As FHWA moves forward, it should ensure that states develop strategies to coordinate and facilitate broadband deployment consistent with the goals of Section 607 of the MOBILE NOW Act, while also preserving existing laws and policies that promote broadband deployment.

FHWA Should Require States to Adopt Registration Processes That Are Streamlined, Efficient, and Non-Duplicative, and Provide States Guidance on Strategies That Minimize Repeated Excavations While Preserving Other Laws and Policies That Promote Infrastructure Deployment. Section 645.307(a) of FHWA’s proposed new rules would obligate states to establish processes to register broadband infrastructure entities that seek to be included in a

networks that will deliver better, faster internet to rural areas and across the country” and noting that it will “create new opportunities for state Departments of Transportation and broadband providers to coordinate excavations to ease the installation of broadband infrastructure alongside highway projects”).

⁴ See Remarks by President Trump on United States 5G Deployment (Apr. 12, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-united-states-5g-deployment/> (“5G will ... transform the way our citizens work, learn, communicate, and travel. It will make American farms more productive, American manufacturing more competitive, and American healthcare better and more accessible.”); Office of Science and Technology Policy, *Ensuring America Reaches Its 5G Potential* (May 30, 2019), <https://www.whitehouse.gov/articles/ensuring-america-reaches-its-5g-potential/>.

⁵ See, e.g., The FCC’s 5G FAST Plan (rel. Sept. 28, 2018), <https://docs.fcc.gov/public/attachments/DOC-354326A1.pdf> (describing the Commission’s comprehensive strategy to facilitate America’s superiority in 5G technology).



state’s broadband infrastructure ROW facilitation efforts, and to electronically notify the participating broadband infrastructure entities of those efforts on an annual basis and provide additional notifications as necessary. FHWA should ensure that the registration and electronic notification processes adopted by states are streamlined, efficient, and non-duplicative of existing processes, and are implemented by state agencies themselves and not delegated to private entities, as FHWA proposes. Doing so will avoid unnecessary duplication of ministerial processes, reduce the burden on state resources, reduce the costs associated with participation, and help maximize participation in the state programs and the benefits those programs produce.

FHWA should also provide states with examples or best practices for “strategies to minimize repeated excavations,” as set forth in proposed Section 645.307(a)(4) of the new rules, to consider as they coordinate their statewide telecommunication and broadband plans and state and local transportation and land use plans. While each state may have individual facts and circumstances to accommodate, these examples can assist the state as it endeavors to balance the excavation minimization strategies with other considerations. For example, FHWA should encourage states to consider promoting coordination with local and municipal projects so that broadband infrastructure entities are not required to relocate facilities multiple times in the same roadway for successive projects. FHWA should also consider promoting coordination with multiple broadband infrastructure entities, even within a single project, to encourage deployment of infrastructure by all entities when the road is already open, where possible, and to avoid and minimize conflicts.

Finally, FHWA should encourage states to adopt programs that are consistent with MOBILE NOW, as well as existing laws related to ROW access. For example, CTIA supports FHWA’s proposal that any existing broadband infrastructure entities are not disadvantaged where a state chooses to provide for the installation of broadband infrastructure in the ROW of a Federal-aid highway project. In addition, if a state makes state-owned or controlled assets in the ROW (e.g., conduit, dark fiber, poles) available for broadband deployment, those assets should be made available on a competitively neutral and non-discriminatory basis to all broadband infrastructure entities. Relatedly, states should not penalize broadband infrastructure entities for deployments that occur outside the context of a Dig Once framework. By providing this guidance, FHWA can enable states to facilitate competitive access to the ROW pursuant to MOBILE NOW, while also preserving existing ROW access laws, policies, and frameworks, including, for example, those set forth in Sections 332 and 253 of the Communications Act.



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CTIA encourages FHWA to move forward with its proposals, as described herein, which will allow FHWA to ensure that states adopt efficient and effective programs for deploying important broadband infrastructure in the ROW.

Respectfully Submitted,

/s/ Avonne Bell

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