

**ADOPTED REGULATION OF THE
DEPARTMENT OF TRANSPORTATION**

LCB File No. R082-01

Effective November 1, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-41, NRS 408.215 and 408.423.

Section 1. Chapter 408 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 24, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 5, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Community antenna television company” has the meaning ascribed to it in NRS 711.030.*

Sec. 4. *“Right of way” means the longitudinal right of way along, under or above a state or federal highway that:*

1. Is not vacated, abandoned, relinquished or otherwise disposed of; or

2. The department has determined is not likely to be disposed of,

in accordance with the provisions of NRS 408.523, 408.527 or 408.533.

Sec. 5. *“Telecommunications facility” means any line, fiber, wire, conduit, interduct, access manhole, handhole, tower, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, system or device of a provider of telecommunications or a*

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community antenna television company that is used to transmit, receive, produce or distribute a wireless, wireline, electronic or optical signal for communication.

Sec. 6. *It is the policy of the department in managing its rights of way to accommodate telecommunications facilities along highway rights of way in accordance with the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161, when such use and occupancy of the state highway or highway right of way do not adversely impact highway or traffic safety, or otherwise impair unreasonably the state highway, or its aesthetic quality, and do not conflict with federal, state and local laws and regulations, including any rights of underlying property owners that granted easements to the department.*

Sec. 7. *A provider of telecommunications or a community antenna television company that applies for an occupancy permit pursuant to sections 2 to 24, inclusive, of this regulation is not required to comply with the provisions of NAC 408.429 to 408.437, inclusive, and 408.527 to 408.557, inclusive.*

Sec. 8. *A telecommunications facility must be installed underground on a state highway or right of way unless the department determines that an overhead installation is appropriate. In determining whether to authorize an overhead installation, the department will consider public health and safety and the factors set forth in NAC 408.467.*

Sec. 9. 1. *Except as otherwise provided in subsection 2, to minimize adverse impacts to the state highway or highway rights of way, and related highway facilities and pavement structures, and to avoid a significant compromise of the safe, efficient and convenient use of the state highway system for the traveling public, the department may limit the number of trenches, plowings or borings in a section of a state highway or right of way for the installation of a telecommunications facility to once every 5 years.*

2. The department may, at any time, and shall, once every 18 months, grant an exception to the limitation set forth in subsection 1 if the trenching, plowing or boring is:

(a) The only practicable method of installing or constructing the telecommunications facility; and

(b) Required to carry out the obligations of the provider of telecommunications or community antenna television company to serve its customers pursuant to federal state, or local law or a franchise agreement with a local government.

3. In determining whether to grant an exception pursuant to subsection 2, the department will, in its management of rights of way, consider:

(a) The feasibility of alternatives to using the right of way;

(b) The type of highway upon which the trenching, plowing or boring will be performed; and

(c) The effect the proposed trenching, plowing or boring will have on the state highway or right of way and members of the traveling public.

4. If an exception is granted pursuant to subsection 2, the provider of telecommunications or community antenna television company must obtain an occupancy permit from the department for the additional trenching, plowing or boring. As a condition of issuing the occupancy permit, the department may require the provider or company to mitigate any effects that the trenching, plowing or boring will cause to the state highway or right of way.

5. The provisions of subsection 1 do not limit the number of applications for an occupancy permit that a provider of telecommunications or a community antenna television company may submit to the department for the same or a substantially similar section of a state highway or right of way if the trenching, plowing or boring is:

(a) Required because of an emergency; and

(b) Necessary to protect public health and safety.

6. Nothing in this section is intended to impair any rights which may be afforded to telecommunications carriers under the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56-161.

Sec. 10. *1. Except as otherwise provided in subsection 2, the minimum depth for the installation of a new direct telecommunications line or conduit is 36 inches, except that the minimum depth may be 42 inches if necessary to comply with the design requirements of the department. The department may require a minimum depth of more than 42 inches if it determines it is necessary for the installation of a telecommunications line.*

2. The department may allow a minimum depth of less than 36 inches if the director determines that the installation is desirable but achieving a depth of 36 inches is not practicable.

Sec. 11. *1. Except as otherwise provided in NAC 408.403, a provider of telecommunications or community antenna television company that applies for an occupancy permit must provide to the department:*

(a) The information required by the provisions of subsection 6 of NAC 408.411, NAC 408.413 and 408.427, and subsection 3 of NAC 408.523.

(b) Four sets of detailed plans, drawings or maps.

2. In addition to the information required in subsection 1, where required by the particular circumstances, the department may require a provider of telecommunications or community antenna television company that applies for an occupancy permit to provide:

(a) A plan for the drainage of water, including calculations for the runoff of water for a telecommunications facility that will affect the right of way. The calculations must include peak runoff of water for existing and proposed development conditions if the use of the land will be substantially altered. Existing flow patterns at the highway must be perpetuated, and any changes to the drainage system of the highway proposed by the provider of telecommunications or community antenna television company must be supported by drainage calculations. The provider or company shall provide for the attenuation of peak flows that may have increased because of the development.

(b) A survey of cultural resources including any appropriate mitigating action that will be conducted for a telecommunications facility that will be placed longitudinally within a previously undisturbed section of the right of way or for lateral crossings or approaches requiring substantial disruption of previously undisturbed sections of the right of way. If a survey of cultural resources is required, a written report of the survey must be provided.

3. In addition to the requirements set forth in subsections 1 and 2, as applicable, a provider of telecommunications or a community antenna television company that installs or constructs a telecommunications facility on a section of a freeway where access is controlled shall provide to the department the information required by subsections 3, 4 and 5 of NAC 408.411.

4. If approval from a local government is required for the installation or construction of a telecommunications facility and evidence of the approval is not submitted to the department, the department may issue an occupancy permit pursuant to this section that is contingent upon the approval of the local government.

5. If approval from a federal agency or a state agency other than the department is required for the installation or construction of a telecommunications facility and evidence of the approval is not submitted to the department, and an occupancy permit may otherwise be issued by the department, the department will issue a notice of intent to issue the occupancy permit upon the approval of the federal or state agency.

Sec. 12. 1. Upon receipt of an application for an occupancy permit, the department will determine whether the provider of telecommunications or the community antenna television company will be required to cause to be published a notice of the application to allow other providers of telecommunications and community antenna television companies an opportunity to install telecommunications facilities in the same section of the state highway or right of way.

2. The department may require such notice if:

(a) The facility will be located on a section of a state highway or right of way where access is controlled or the facility will occupy at least 1 mile in length of the state highway or state highway right of way; and

(b) The department determines that the installation or construction of a telecommunications facility after the construction or installation of the facility for which the occupancy permit is requested will be limited or prohibited because the state highway or right of way will not be able to accommodate the additional facility because of physical limitations, safety or other factors relating to the state highway or right of way.

3. If the department determines that such notice is required, the department will notify the provider of telecommunications or community antenna television company of that fact in

writing within 15 working days after it receives the application. The provider or company shall:

(a) Cause the notice to be published at least twice in two regional newspapers of general circulation in this state. The notice must include a statement that written responses may be submitted to the provider or company for a period of not less than 30 days after the notice is published.

(b) Provide written notice to each:

(1) Community antenna television company that holds a franchise in the affected area; and

(2) Provider of telecommunication services included on the Service List for Interconnection Agreements maintained by the public utilities commission of Nevada or any similar list of providers of telecommunication services maintained by the department.

The notice must include a statement that each such community antenna television company and provider of telecommunication services may submit written responses to the provider of telecommunications or community antenna television company applying for an occupancy permit for a period of not less than 30 days after the notice is provided.

4. The provider of telecommunications or community antenna television company shall submit to the department a copy of each notice required by subsection 3 and any written responses it received pursuant to subsection 3.

Sec. 13. 1. *Except as otherwise provided in subsection 2, the department will approve or deny an application for an occupancy permit in writing within 90 days after it receives a substantially completed application. If the department denies the application for an occupancy*

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permit, the department will send a written notice to the provider of telecommunications or community antenna television company that sets forth the reasons for the denial.

2. The department will provide to the provider of telecommunications or community antenna television company a written report concerning the status of its application within 45 days after it receives the application. If the telecommunications facility is a significant project, the department will, in lieu of approving or denying the application within 90 days, provide to the provider or company a written report concerning the status of its application within 90 days after the department receives the application, and include a statement that the department will require additional time to complete the review of the application. The department will extend the periods for review prescribed by this section if additional information is required.

3. In determining whether or not to grant an occupancy permit, the department will review the application to assure compliance with all applicable provisions of:

- (a) NAC 408.403 to 408.419, inclusive;*
- (b) NAC 408.447 to 408.459, inclusive;*
- (c) NAC 408.467 and 408.469;*
- (d) Sections 2 to 24, inclusive, of this regulation;*
- (e) Any applicable federal or state laws, including obtaining any required approvals from federal agencies or state agencies, other than the department;*
- (f) Any required approvals by local governments, which may include a public hearing process for a telecommunications facility that is more than 8 feet in height; and*
- (g) Applicable department standards relating to underground and overhead utilities.*

Sec. 14. 1. *Except as otherwise provided in this subsection, if the department approves an application for an occupancy permit, it may require the provider of*

telecommunications or community antenna television company to obtain a surety bond in the amount of \$100,000. The department may require the provider or company to obtain a surety bond of more than \$100,000, but less than \$2,000,000, for a telecommunications facility of significant length.

2. The department will, in determining whether a surety bond is required, consider:

(a) The experience of the department with the provider of telecommunications or community antenna television company;

(b) The possibility of disrupting the maintenance and operation of the state highway or right of way if the telecommunications facility is installed;

(c) The potential damage to the highway system; and

(d) The potential increase in hazards to the users of the state highway or right of way if the proposed telecommunications facility is not installed in a timely manner or is installed in a manner that does not comply with the requirements set forth in the occupancy permit.

Sec. 15. 1. The department may, upon request, issue an annual occupancy permit to a provider of telecommunications or a community antenna television company that wishes to install more than one telecommunications facility or change more than one telecommunications facility, or any combination thereof, within 1 year if the portion of the telecommunications facility located on a state highway or right of way is less than one-half mile in length. The department will not issue an annual occupancy permit for an interstate highway or highway where access is controlled, or where the installation or change is one-half mile or more in length.

2. If a provider of telecommunications or a community antenna television company applies for an annual occupancy permit, the provider or company must obtain an annual

occupancy permit for each highway district in which the telecommunications facility will be installed or changed. The provider or company must submit a completed application to the district office of the department in each district for which an annual occupancy permit is requested not later than January 15 of each year. The department will issue or renew or refuse to issue or renew an annual occupancy permit not later than March 15 of each year. An annual occupancy permit is valid until March 15 of the following year.

3. The district office of the department may limit the application of the annual occupancy permit to certain state highways or rights of way or sections of those state highways or rights of way.

4. The department may require the provider of telecommunications or community antenna television company to obtain a surety bond in the amount of \$200,000 for each annual occupancy permit that is issued to the provider or company by the department.

Sec. 16. 1. *If an annual occupancy permit is issued by the department pursuant to section 15 of this regulation, the provider of telecommunications or community antenna television company shall:*

(a) Notify the district office of the department not less than 5 working days before work on the telecommunications facility begins; and

(b) Submit to the district office of the department:

(1) Plans indicating the location of the telecommunications facility, including the elevation and alignment of the facility;

(2) A schedule for the completion of the installation of or change to the telecommunications facility; and

(3) A plan for controlling traffic pursuant to NAC 408.413.

2. *The district office may:*

(a) *Prohibit or restrict access to a right of way for which an annual occupancy permit has been issued if access to the right of way will prevent, delay or otherwise interfere with a highway project or based on other relevant factors; and*

(b) *Limit the hours during which work relating to the telecommunications facility may be performed where necessary in residential or commercial areas.*

3. *A telecommunications facility must be installed or changed in accordance with the requirements set forth in the annual occupancy permit and the provisions of sections 2 to 24, inclusive, of this regulation.*

4. *The department may revoke an annual occupancy permit if the provider of telecommunications or community antenna television company fails to comply with the requirements set forth in the permit or any provision of sections 2 to 24, inclusive, of this regulation.*

Sec. 17. *1. If a provider of telecommunications or a community antenna television company wishes to change a telecommunications facility for which an occupancy permit has been issued by the department, the provider or company shall provide to the district office of the department not less than 5 working days before work on the facility begins:*

(a) *A written description of the proposed changes to the facility;*

(b) *A written explanation of the manner in which the changes to the facility relate to the original occupancy permit issued by the department;*

(c) *A plan that indicates the location of and changes to the facility;*

(d) *A schedule for the completion of the changes to the facility; and*

(e) *A plan for controlling traffic pursuant to NAC 408.413.*

2. If the department has not issued an occupancy permit for an existing facility, the provider of telecommunications or community antenna television company shall provide a copy of the occupancy permit or franchise agreement issued by a local government, if one is reasonably available, for the facility.

3. The provider of telecommunications or community antenna television company must submit the fee required by section 23 of this regulation before beginning work on the facility.

Sec. 18. *The inspection and repair of a telecommunications facility must be performed in accordance with the provisions of NAC 408.461 and applicable department standards terms and conditions relating to emergencies, control of access highways, routine inspection and maintenance of underground utilities, emergency repairs, and routine inspection and maintenance of pole lines.*

Sec. 19. *The department may, in issuing an occupancy permit, require the provider of telecommunications or community antenna television company to meet additional conditions including, but not limited to:*

1. Providing for the inspection of the construction of the facility, by an engineering consultant approved by the department or by any other method approved by the department.

2. Restoring the state highway or right of way a condition which is at least comparable to the condition which existed before the placement of the telecommunications facility.

3. Installing additional conduits that must be made available to other providers of telecommunications and community antenna television companies on a competitively neutral and nondiscriminatory basis, if physical conditions prevent future installations of conduits.

The conduits remain the property of the provider or company that installed the conduits.

Sec. 20. Subject to the requirements of NAC 408.303 to 408.379, inclusive, occupancy permits for telecommunications facilities are revocable and the department assumes no responsibility for the relocation of a telecommunications facility.

Sec. 21. 1. A provider of telecommunications or community antenna television company that is issued an occupancy permit shall indemnify, defend and hold harmless the State of Nevada, the department and its officers, agents and employees from any claims, causes of action and suits at law or in equity for losses, damages, claims or demands, and from any liability and expense, including reasonable attorney's fees, arising out of the use or occupancy of the state highway or right of way by the provider or company, unless the provider or company establishes that the damage or injury was caused by the willful misconduct or gross negligence of the State of Nevada, the department or its officers, agents or employees.

2. The State of Nevada, the department and its officers, agents and employees are not liable for any expense incurred by the provider of telecommunications or community antenna television company in its use and occupancy of the state highway or right of way.

Sec. 22. 1. Except as otherwise provided in Part 645 of Title 23 of the Code of Federal Regulations, if the department does not have a fee interest in a state highway or right of way, the director may not, as a condition for the issuance of an occupancy permit, require the provider of telecommunications or community antenna television company to acquire at its expense all easements, consents or other rights or interests from the owners of fee interests or other interests for any section of the state highway or right of way if the provider or company provides indemnification to the State of Nevada, the department and its officers, agents and employees pursuant to the provisions of this section.

2. If the department does not have a fee interest in a state highway or right of way, the provider of telecommunications or community antenna television company must indemnify, defend and hold harmless the State of Nevada, the department and its officers, agents and employees from any claim, cause of action, liability, loss, damage, cost, expense or fee that the State of Nevada, the department or its officers, agents or employees may be required to pay to any person claiming the fee interest or other property interest in that state highway or right of way, unless the provider or company establishes that the damage or injury was caused by the willful misconduct or gross negligence of the State of Nevada, the department or its officers, agents or employees. The agreement of indemnification required pursuant to this subsection must include a provision setting forth:

(a) The obligation of the provider or company to commence and diligently prosecute an appropriate cause of action or defend any other cause of action to protect the department from the immediate or automatic reversion of any easement or other interest in the state highway or right of way and remove any telecommunications facility from a state highway or right of way if ordered by a court of competent jurisdiction;

(b) The obligation of the provider or company or its successor in interest whose net assets in this state, as defined according to generally accepted accounting principles, are less than \$20,000,000 to obtain a surety bond, in an amount determined by the department based on reasonable costs related to the removal of the telecommunications facility and restoration of the state highway or right of way and to designate the State of Nevada, the department and its officers, agents and employees as beneficiaries of the surety bond and as parties who may bring an action on the surety bond if the indemnity of the provider or company is not adequate; and

(c) The obligation of the provider or company to include in any instrument transferring ownership of a telecommunications facility, the assumption by the transferee of the indemnity of the provider or company and, if applicable, the designation of the State of Nevada, the department and its officers, agents and employees as beneficiaries of the surety bond and as parties who may bring an action on the surety bond if the indemnity of the provider or company is not adequate.

3. If the department does not have a fee interest in a state highway or right of way and the application for the occupancy permit does not relate to an existing telecommunications facility, the provider of telecommunications or community antenna television company shall provide verification that it has exercised due diligence and an explanation of the factual or legal basis that supports the right of the provider or company to occupy the state highway or right of way.

Sec. 23. 1. *The department shall charge and collect fees for reviewing applications for occupancy permits and inspecting the installation of telecommunication facilities, intended to cover the costs to the department for those activities.*

2 A provider of telecommunications or community antenna television company shall submit:

(a) The nonrefundable portion of the fee required by subsection 1 when it submits the application for an occupancy permit to the department; and

(b) The remainder of the fee required by subsection 1 before the occupancy permit is issued by the department.

Sec. 24. *If the department approves an application for an occupancy permit, the utility provider of telecommunications or community antenna television company must comply with*

applicable department standards, terms and conditions relating to general provisions for occupancy permits, as well as any specific conditions required by the department.

Sec. 25. NAC 408.010 is hereby amended to read as follows:

408.010 As used in NAC 408.013 to 408.557, inclusive, *and sections 2 to 24, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 408.013 to 408.290, inclusive, have the meanings ascribed to them in those sections.

Sec. 26. NAC 408.403 is hereby amended to read as follows:

408.403 1. Each facility or encroachment upon a state highway or right of way for a state highway must be authorized pursuant to *a permit* to occupy or use the right of way unless the occupancy was established before the highway became a state highway.

2. *Except as otherwise provided in section 22 of this regulation, if* the department does not have a fee interest in the property upon which the state highway *or right of way* is located, the owner of the facility or other encroachment upon the state highway *or right of way* must obtain an occupancy permit and the consent of the owner of the property upon which the state highway *or right of way* is located.

3. The department will allow the joint use of state highways or rights of way for state highways if essential service to the general public is provided and joint use can be accommodated within the state highway *or right of way* without substantially affecting the operation, safety, maintenance or aesthetics of the state highway.

4. The department will perpetuate the existing rights of a utility which is required to relocate a facility because or in accommodation of a project of the department if the utility had a prior compensable interest in the property.

5. An occupancy permit issued by the department authorizes the permittee to occupy the state highway or right of way only to the extent of the interest therein of the State of Nevada and the department , and the occupancy permit does not confer upon the permittee any rights to or interest in the underlying fee or other property interests therein of another person, if any.