

**REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF TRANSPORTATION**

LCB File No. R082-01

October 4, 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 39, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 39, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, 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 is not vacated, abandoned, relinquished or otherwise 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 telecommunication services or a community antenna television company that is used to transmit, receive, produce or distribute a wireless, wireline, electronic or optical signal for communication.*

Sec. 6. *“Utility” means a provider of telecommunication services or a community antenna television company.*

Sec. 7. *A utility that applies for an occupancy permit pursuant to sections 2 to 39, inclusive, of this regulation is not required to comply with the provisions of NAC 408.429 to 408.437, inclusive, 408.461 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 aerial installation is appropriate. In determining whether to authorize an aerial 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, 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 utility to serve its customers pursuant to federal or state 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 not 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 utility 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 utility 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 utility 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 in accordance with the provisions set forth in subsection 3 of section 36 of this regulation.

Sec. 10. *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.*

Sec. 11. 1. *Except as otherwise provided in NAC 408.403, a utility 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.

(c) 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 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 utility must be supported by drainage calculations. The utility shall provide for the attenuation of peak flows that may have increased because of the development.

(d) If a survey of cultural resources is required by the department, a report of that survey, 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.

2. In addition to the requirements set forth in subsection 1, a utility 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.

3. 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.

4. 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 utility will be required to cause to be published a notice of the application to allow other utilities an opportunity to install telecommunications facilities in the same section of the state highway or right of way.*

2. The department will 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 is at least 1 mile in length; 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 utility of that fact in writing within 15 working days after it receives the application. The utility 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 utility for a period of not less than 30 days after the notice is published.

(b) Provide written notice to each provider of telecommunication services included on the Service List for Interconnection Agreements maintained by the public utilities commission of Nevada or a list of providers of telecommunication services maintained by the department. The

notice must include a statement that each such provider of telecommunication services may submit written responses to the utility applying for an occupancy permit for a period of not less than 30 days after the notice is provided.

4. The utility 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 completed application. If the department denies the application for an occupancy permit, the department will send a written notice to the utility that sets forth the reasons for the denial.*

2. The department will provide to the utility a written report concerning the status of its application within 45 days after it receives the application. If the telecommunications facility is of significant length, as determined by the department, the department will, in lieu of approving or denying the application within 90 days, provide to the utility 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. A utility that wishes to obtain an occupancy permit must:

(a) Comply with the provisions of:

(1) NAC 408.403 to 408.419, inclusive;

(2) NAC 408.447 to 408.459, inclusive;

(3) NAC 408.467 and 408.469;

(4) Sections 2 to 39, inclusive, of this regulation; and

(5) Any applicable federal or state laws;

(b) Obtain the approval of a federal agency or a state agency other than the department, if required; and

(c) Obtain the approval of a local government for a telecommunications facility that is more than 8 feet in height, if required.

Sec. 14. 1. *Except as otherwise provided in this subsection, if the department approves an application for an occupancy permit, it may require the utility to obtain a surety bond in the amount of \$100,000. The department may require the utility to obtain a surety bond of more than \$100,000, but less than \$2,000,000, for a telecommunications facility of significant length, as determined by the department.*

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

(a) The experience of the department with the utility;

(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 utility 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 telecommunications facility is less than one-half mile in length and located on a state highway or right of way, other than an interstate highway or highway where access is controlled.*

2. If a utility applies for an annual occupancy permit, the utility must obtain an annual occupancy permit for each highway district in which the telecommunications facility will be installed or changed. The utility 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 utility to obtain a surety bond in the amount of \$200,000 for each annual occupancy permit that is issued to the utility by the department.

Sec. 16. 1. *If an annual occupancy permit is issued by the department pursuant to section 15 of this regulation, the utility 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 project; or

(b) Limit the hours during which work relating to the telecommunications facility may be performed.

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 39, inclusive, of this regulation.

4. The department may revoke an annual occupancy permit if the utility fails to comply with the requirements set forth in the permit or any provision of sections 2 to 39, inclusive, of this regulation.

Sec. 17. 1. *If a utility wishes to change a telecommunications facility for which an occupancy permit has been issued by the department, the utility 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 the facility, the utility shall provide a copy of the occupancy permit for the facility issued by a local government.

3. The utility 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:*

- 1. Subsection 3 of section 36 and subsections 1 and 2 of section 37 of this regulation;*
- 2. Subsection 10 of section 38 of this regulation; and*
- 3. Subsection 9 of section 39 of this regulation.*

Sec. 19. *The department may, as a condition of issuing an occupancy permit, require the utility to:*

- 1. Provide for the inspection of the construction of the facility, at the expense of the utility, by an engineering consultant approved by the department or by any other method approved by the department.*
- 2. Restore the state highway or right of way to its original condition.*
- 3. Install additional conduits that must be made available to other utilities on a competitively neutral and nondiscriminatory basis. The conduits remain the property of the utility that installed the conduits if physical conditions prevent future installations of conduits.*

Sec. 20. *1. The department may revoke an occupancy permit.*

2. Except as otherwise provided in NAC 408.303 to 408.379, inclusive, the department is not responsible for the relocation of a telecommunications facility.

Sec. 21. *1. A utility 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 utility, unless the utility 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 utility 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 utility 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 utility 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 utility 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 utility 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 utility 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 utility 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 parties who may bring an action on the surety bond if the indemnity of the utility is not adequate; and

(c) The obligation of the utility to include in any instrument transferring ownership of a telecommunications facility, the assumption by the transferee of the indemnity of the utility and, if applicable, the designation of the State of Nevada, the department and its officers, agents and employees as parties who may bring an action on the surety bond if the indemnity of the utility 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 a telecommunications facility for which an occupancy permit has been issued by the department, the utility shall provide verification that it has exercised due diligence and an explanation of the factual or legal basis that supports the right of the utility to occupy the state highway or right of way.

Sec. 23. 1. The department shall charge and collect the following fees:

(a) For reviewing an application for an occupancy permit and inspecting the installation of a telecommunications facility that is not more than one-half mile in length, a fee of \$700, \$175 of which is not refundable.

(b) For reviewing an application for an occupancy permit and inspecting the installation of a telecommunications facility that is more than one-half mile but less than 2.5 miles in length, a fee of \$1,150, \$275 of which is not refundable.

(c) For reviewing an application for an occupancy permit and inspecting the installation of a telecommunications facility that is more than 2.5 miles but less than 5 miles in length, a fee of \$1,500, \$375 of which is not refundable.

(d) For reviewing an application for an occupancy permit and inspecting the changes to a telecommunications facility for which an occupancy permit has been issued by the department and which is not more than 1 mile in length, a fee of \$300, \$125 of which is not refundable.

(e) For reviewing an application for an occupancy permit and inspecting the changes to a telecommunications facility for which an occupancy permit has been issued by the department and which is more than 1 mile but not more than 5 miles in length, a fee of \$750, \$200 of which is not refundable.

(f) For reviewing an application for an annual occupancy permit, a fee of \$9,500, \$500 of which is not refundable.

2. The department will charge and collect a fee in an amount equal to the cost incurred by the department to review an application for an occupancy permit and inspect the installation of a telecommunications facility or the changes to a telecommunications facility for which an occupancy permit has been issued by the department and which is more than 5 miles in length. The utility shall submit the fee to the department not later than 15 days after

the utility receives a notice from the department, by certified mail, setting forth the amount of the fee. If, upon the completion of the installation of or change to the telecommunications facility, the department determines that the amount of the fee collected was:

(a) More than the cost incurred by the department, the department will refund to the utility the amount by which the fee exceeded the cost; or

(b) Less than the cost incurred by the department, the department will send to the utility, by certified mail, a notice setting forth the amount by which the cost exceeded the fee. The utility shall submit the amount set forth in the notice not later than 15 days after the utility receives the notice.

3. In addition to the fees set forth in subsection 1, the department may charge and collect from a utility a fee in an amount equal to not more than 10 percent of any fee set forth in that subsection if the department determines that the cost to review an application for an occupancy permit and inspect a telecommunications facility of the utility is more than the amount of the fee charged and collected pursuant to subsection 1.

4. A utility shall submit:

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

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

Sec. 24. 1. *An occupancy permit issued to a utility pursuant to the provisions of sections 2 to 39, inclusive, of this regulation is subject to all prior permits, agreements, contracts, leases, liens, reservations, conditions, encumbrances or claims of title that may affect the property covered by the occupancy permit, and the utility shall, if the department*

does not own a fee simple interest in the property, obtain consent from the person who owns such an interest to install or change a telecommunications facility on that property.

2. The terms and conditions of an occupancy permit are revocable, or subject to modification or abrogation by the State of Nevada, at any time, without prejudice to any prior rights, including those rights evidenced by any joint-use agreements, franchise rights or reserved rights for operating purposes in a grant of a highway easement.

Sec. 25. *1. A utility may not transfer, convey or assign an occupancy permit or any privilege or responsibility included in the permit relating to any work that will be performed within the right of way without the prior written approval of the department.*

2. A utility shall ensure that the responsibility for the repair and maintenance of any telecommunications facility installed in connection with an occupancy permit will be transferred to its successors in interest or assigns, if the occupancy permit is approved. The utility is solely responsible for the performance of the work authorized by the occupancy permit.

3. If the department revokes the occupancy permit, the utility shall, at the direction of the district engineer, remove all facilities installed pursuant to the occupancy permit and restore the right of way to its original condition.

4. Any work performed pursuant to the occupancy permit constitutes an acceptance by the utility of the provisions of the permit.

Sec. 26. *A utility shall complete the installation of or change to a telecommunications facility within 1 year after the occupancy permit is issued. If the work is not completed within 1 year, the department will revoke the permit unless, after receipt of a written request from the*

utility, the department determines that additional time to complete the work is required. The department may authorize an additional period of not more than 90 days to complete the work.

Sec. 27. *A telecommunications facility installed in accordance with an occupancy permit may be relocated or removed pursuant to the provisions of subsections 3 and 4 of NRS 408.210.*

Sec. 28. *A utility shall obtain the prior written approval of the district engineer before making any change to the approved plans for the telecommunications facility. If the district engineer approves a change to the approved plans, the utility shall submit to the district engineer three copies of the “as built” drawings indicating the change within 30 days after the date of completion.*

Sec. 29. 1. *Except as otherwise provided in section 16 of this regulation, a utility shall notify the district engineer at least 48 hours before it begins any work, and shall immediately notify the district engineer upon the completion of the work.*

2. *The utility shall, at least 48 hours before it begins any work, notify all utilities located within the area where the telecommunications facility will be installed by using the “one-call” location service at 1-800-227-2600.*

Sec. 30. *A utility shall not perform any work on Saturdays, Sundays or holidays or during the hours of darkness without the prior written approval of the district engineer.*

Sec. 31. *A utility shall keep the occupancy permit or a copy of the occupancy permit at the site of the telecommunication facility and shall, upon request, present the permit to any representative of the department or any law enforcement officer. The utility may not perform any work at the site unless the permit is kept on the site.*

Sec. 32. 1. *The district engineer may conduct periodic inspections of the work performed at the site of the telecommunications facility and shall conduct a final inspection of the work performed by the utility to ensure that the utility has complied with the provisions of the occupancy permit, sections 2 to 39, inclusive, of this regulation and any requirements prescribed by the department. A copy of the requirements is available, upon request, from the department.*

2. For a telecommunications facility of significant length, the department may require a full-time inspector to observe the progress of the work. In such a case, the utility shall compensate the department for the direct and indirect costs of inspection, including, without limitation, wages, travel expenses, per diem allowance and overhead costs incurred by the inspector in connection with the inspection.

Sec. 33. 1. *All work authorized by an occupancy permit issued pursuant to sections 2 to 39, inclusive, of this regulation, including regular and emergency maintenance, must be performed:*

(a) In accordance with A Guide for Accommodating Utilities Within Highway Right-of-Way, adopted by reference pursuant to NAC 408.409, the National Electrical Safety Code, adopted by reference pursuant to NAC 408.469, and any other requirements prescribed by the department; and

(b) To the satisfaction of the district engineer.

FLUSH *Copies of all applicable standards, plans, specifications and requirements are available, upon request, from the district engineer.*

2. The utility shall not allow trenching or excavations within a right of way to remain open during the hours of darkness or on Saturdays, Sundays or holidays. During those

periods, trenching or excavations must be filled to the surrounding grade or completely covered with steel plating or any other suitable material. If the district engineer determines that those measures are impracticable, the utility may erect sound and substantial fencing or barricades that completely enclose the area of the trenching or excavations. The district engineer may, at any time, require the utility to take more stringent measures as he deems necessary.

3. During the installation of a telecommunications facility, the utility shall install or cause to have installed and maintained barricades, warning and directional signs, flags, fuses or any other protective devices. The utility shall provide a flagman on each side of the work area, as required, when work is performed to slow and direct traffic around the work area. The safety measures must comply with requirements set forth in the Manual on Uniform Traffic Control Devices, adopted by reference pursuant to NAC 408.411. Each flagman must have his certification card in his possession when flagging.

4. Any work incidental to the scope of the occupancy permit, but not specifically provided for in the permit, that may affect public safety must be performed in such a manner as to ensure a minimum of danger, delay or inconvenience to the public, or as may be directed by the district engineer.

Sec. 34. *1. When installing or changing a telecommunications facility, a utility shall not allow excavated material, equipment and materials to remain upon the traveled way or roadway prism during the hours of darkness or on Saturdays, Sundays or holidays. The utility shall ensure that all such equipment and materials are situated, after each work shift, not less than 30 feet from the outside edge of the traveled way and not less than 15 feet from the back face of the curb, as the case may be.*

2. The utility shall perform the grading of the work site in such a manner that the roadway drainage ditch or any natural water course that supplies existing drainage facilities will not be blocked or the free flow obstructed at any time. If required to accommodate drainage water, the utility shall install culvert pipe of the size and length and at the location prescribed by the district engineer.

3. The utility shall each day replace the pavement that has been removed with premix and place the final paving course within 7 days after completion of the work and maintain the restored paved areas until such time as the areas are overlaid or reconstructed by the State of Nevada. If settlement occurs in the area of the patched surface, the district engineer may require the utility to repatch the area. If the utility fails to make the repairs as prescribed by the district engineer, the department may make the necessary repairs and require the utility to pay the State of Nevada for the actual direct and related indirect costs incurred by the department to make the repairs.

4. The utility shall ensure that any pavement that is displaced is cut and removed in neat and straight lines. Trenching must be performed in such a manner as to prevent the breaking of the pavement edge adjacent to the trench. The utility shall replace the pavement true to line and grade, and the pavement must extend at least 18 inches on either side of the trench. The district engineer shall approve the paving mix and thickness of the utility's mix, and the depth of the mix must not be less than 3 inches or less than the depth of the existing asphalt pavement, whichever is greater.

Sec. 35. 1. *A utility shall not cut, trim, mutilate, remove or disturb in any manner, brush, shrubs, trees or other flora located within a right of way or highway planting easement, except as approved or directed by the district engineer.*

2. A tree located within such an area whose roots are more than 2 inches in diameter may not be cut when trenching or performing any other underground work that is necessary adjacent to roadside trees. The roots of a tree that are more than 2 inches in diameter must be carefully tunneled under and wrapped in burlap and kept moist until the trench is refilled. A trenching machine may not be used under trees if the trunk or limbs of the tree will be damaged by their use. If the trees are close together and of such size that it is impracticable to protect all roots that are more than 2 inches in diameter, the district engineer may authorize the utility to prune the tops of the trees to balance the loss of roots if performed under his direct supervision. Manholes must not be installed within 20 feet of any tree trunk.

3. The utility shall restore to an equal or better condition any highway appurtenances, including fences, that are disturbed or destroyed pursuant to the occupancy permit. The utility shall install cattle guards or other devices to restrain livestock as required by the department and the occupancy permit. The work area within the right of way must be cleared of construction debris and restored to its original condition before acceptance of the work by the district engineer.

4. Any permanent survey or right-of-way marker or monument that is disturbed or obliterated in the construction of the right of way must be permanently reestablished by a registered land surveyor and a record made thereof.

Sec. 36. 1. *A utility shall maintain and repair any structure, sidewalk, driveway, facility or other encroachment constructed or placed within a right of way, and inspect the area included in the occupancy permit at reasonable intervals to ensure that necessary maintenance is performed in a timely manner. The utility shall perform such maintenance*

and repair until the occupancy permit is revoked, or until the utility removes the encroachment and restores the right of way to its original condition.

2. The district engineer may require the utility to make any necessary repairs or maintain the encroachment. If the utility fails to make the necessary repairs or maintain the encroachment, the State of Nevada may make the repairs or perform the maintenance and require the utility to pay to the State of Nevada the actual direct and related indirect costs it incurred in making the repairs or performing the maintenance.

3. A utility that maintains a right of way in, under or over any state highway may enter in or upon the right of way to make emergency repairs on its facility. The utility shall, as soon as practicable, notify the district engineer of any emergency repairs that are required to be made, and shall immediately send a letter to the district engineer setting forth the repairs that will be made.

Sec. 37. *1. Except as otherwise provided in subsection 2, a utility shall not perform any maintenance within the area of a state highway where access is controlled unless it provides at least 48 hours notice to the district engineer.*

2. If emergency maintenance involving such an area is required, the utility shall immediately perform the maintenance and notify the district engineer of its action as soon as practicable.

3. The utility shall pay all necessary expenses relating to such maintenance, including reasonable attorney's fees, incurred by the State of Nevada to enforce any provisions of the occupancy permit.

Sec. 38. *1. Pipes used for the installation of or change to a telecommunications facility must be jacked or otherwise forced underneath the pavement of a state highway without*

disturbing the pavement. No pavement or roadway may be cut unless specifically authorized by the occupancy permit. Service pipes may not be installed inside culverts used for drainage. No hydraulic or wet boring is allowed.

2. No excavation may be made that is closer than 6 feet from the edge of the pavement, except as otherwise authorized in the occupancy permit.

3. At least 36 inches of cover material must be placed over all pipes or conduits, except as otherwise specified in the occupancy permit.

4. The utility shall:

(a) Fill the trenches with granular backfill or any other acceptable material to the elevation of the bottom of the existing base and surfacing or subgrade as prescribed by the department;

(b) Fill the base area with type 2 gravel or any other equivalent material and remove and dispose of all excess material immediately after backfilling; and

(c) Place all backfill in uniform layers not exceeding 8 inches in loose thickness before compaction and compact the backfill to 90 percent of its maximum density.

5. Except as otherwise provided in paragraph (c), the installation of underground pipes and conduits in a right of way must be marked and designated in the following manner:

(a) For a new installation of underground crossovers, except service laterals where no curbs exist, a 4-inch by 4-inch timber or standard utility marker must be installed and maintained by the utility outside the ditch line at locations approved by the district engineer. The timber or marker must extend 30 inches above the ground and have stenciled thereon the nature of the underground obstruction and the name or identifying symbol of the utility. If

curbs exist, the crossover must be identified by a description and the name of the owner stenciled on the curb in black letters on white background in a compact and legible manner.

(b) For new longitudinal installations where no curbs exist, 4-inch by 4-inch timbers or standard utility markers must be placed adjacent to the conduit or offset at such a distance as may be specified and at intervals not to exceed 1,000 feet, at each angle point, or if nonconcentric with the highway, at least every 300 feet. If the encroachment is located in the traveled way, a timber or other suitable marker must be placed at an offset outside the ditch line at locations approved by the district engineer with an offset distance specified. If curbs exist, the information must be visible and permanently marked or monumented on the curb near each intersection.

(c) In an incorporated city where the facility is installed in accordance with ordinances, regulations or established practices, a utility is not required to mark or designate the facility in the manner prescribed in paragraphs (a) and (b) unless required by federal law.

FLUSH *All installations authorized by this subsection must be placed or constructed in such a manner to prevent creating a hazard to the traveling public.*

6. Casings must be designed to support the load of the highway and superimposed loads thereon, and must be at least equal to the structural requirements for highway drainage facilities. Casings must be composed of materials of satisfactory durability under conditions to which they may be exposed.

7. A bore hole or pit may be placed within 35 feet of the edge of the shoulder if:

(a) The bore hole or pit area is completely fenced;

(b) The utility or its contractor does not use any section of the right of way for its operations, except in the fenced areas or as otherwise authorized by the district engineer;

(c) Access to the bore hole or pit area is not allowed from the traveled portion of the highway;

(d) Any voids created by boring outside the casing is pressure grouted; and

(e) The bore hole or pit is not allowed within the median area of a highway, except as authorized by the district engineer. Extreme care must be used to prevent the impairment of the ground under the pavement and shoulders of the highway.

8. The district engineer may authorize trenching if he determines it is necessary. Trenched areas of pavement must be patched in accordance with the requirements prescribed by the department and any instructions included in the occupancy permit. Trenching is not allowed unless:

(a) The roadway is scheduled for overlay or reconstruction within the next 2 years;

(b) The surface of the roadway is in such poor condition that a permanent patching of the pavement will not degrade the quality of the existing surface of the roadway; or

(c) The utility has attempted to bore the crossing and determined that boring is impracticable because of conditions below the surface of the roadway.

9. The utility may inspect and repair underground facilities, including manholes, conduits, cables and pipelines. The utility may open existing manholes to repair underground facilities and uncover not more than 50 feet of cables or lines buried in earthen sections of the right of way. If existing manholes lie within the improved surfaces of the highway, the utility shall provide adequate protection of traffic in accordance with the occupancy permit or as directed by the district engineer. No excavation may be made in an improved surface, landscaped area or closer than 6 feet to the edge of pavement without a special permit issued by the department, except in emergencies.

10. The utility may make emergency repairs by excavating through improved surfaces only if breaks in the lines, conduits or cables under the pavement are a hazard to traffic or cause a serious interruption of an essential service. In such cases, the utility shall notify the district engineer as soon as practicable. Backfilling and the replacement of the pavement must be performed in accordance with the requirements prescribed by the department. A copy of those requirements is available, upon request, from the department.

11. Any landscaped area that is disturbed must be relandscaped at the expense of the utility.

12. The provisions of this section do not authorize the continuous installation of gas or water service connections within the state highway or right of way, regardless of the location of the main. All new pipe services, main extensions or excavations to abandon services must be authorized by a separate occupancy permit.

Sec. 39. *1. The utility shall ensure that, when installing aerial and underground electrical or telecommunication lines, the clearances and method of construction it uses comply with the safety rules for the installation and maintenance of electrical supply and telecommunication lines set forth in the National Electrical Safety Code, adopted by reference pursuant to NAC 408.469, and the requirements prescribed by the department. A copy of those requirements is available, upon request, from the department.*

2. The utility shall obtain permission, if required, from each adjacent property owner before performing any work on the telecommunications facility.

3. The utility shall not attach any guy wires to trees, except as specifically authorized in the occupancy permit, and shall not attach any guy wires that girdle the tree or interfere with

its growth. Guy wires must be kept at a minimum elevation above ground as required by the district engineer.

4. The utility shall ensure that the length of old timbers are removed from the ground and the holes backfilled and the ground thoroughly compacted.

5. Aerial crossings must comply with the requirements set forth in the National Electrical Safety Code, adopted by reference pursuant to NAC 408.469.

6. The minimum vertical clearance for a highway crossing for:

(a) Communications lines is 18 feet;

(b) Electrical lines is 22 feet; and

(c) Walkways is 17.5 feet.

FLUSH *The measurement must be taken from the highest point of the roadway prism to the lowest point of the installation crossing.*

7. Aerial crossings must be made at or as close to 90 degrees as possible across the roadway. Poles supporting crossings must be located:

(a) Outside the clear zone as prescribed by the Guide for Selecting, Locating and Designing Traffic Barriers, 1977 edition; and

(b) If possible, at the right of way unless the median strip is at least 80 feet in width and the median pole is required to support the crossing.

FLUSH *The department hereby adopts by reference the Guide for Selecting, Locating and Designing Traffic Barriers, 1977 edition, and any subsequent edition issued by the American Association of State Highway and Transportation Officials that has been approved by the department for use in this state. Each new edition shall be deemed approved by the department within 60 days after the date of publication by the American Association of State Highway and*

Transportation Officials. The department will review each edition issued after the 1977 edition to ensure its suitability for this state. The most recent edition that has been approved by the department may be obtained from the Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, at no cost.

8. Poles must be placed at or as close to the right of way as possible. A telecommunications facility may not be installed longitudinally within the control of the access lines of any freeway, except that such installations may be authorized by the district engineer if the utility demonstrates that:

(a) The accommodation will not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway;

(b) The accommodation will not be constructed or serviced by direct access from the through traffic roadways or connecting ramps;

(c) The accommodation will not interfere with or impair the present use or future expansion of the freeway; and

(d) Any alternate location would be contrary to the public interest. The determination must include an evaluation of the direct and indirect environmental and economic effects which would result from the disapproval of the use of the right of way for the accommodation of the facility.

9. The utility:

(a) May stub, anchor or reset existing poles if no change in location is made. Stubs and anchors must not be placed between an existing pole and the traveled way.

(b) May replace poles, guy poles and crossarms in exact location on not more than two consecutive poles. No additional poles or guy poles are authorized by this paragraph.

(c) May replace broken pins and insulators, repair broken wires, pull slack wires and replace or pull broken or slack guy wires and repair and complete transfer work on existing aerial cables.

(d) May string aerial wire and place additional crossarms on existing poles. Existing transformers may be replaced and new transformers may be installed on existing poles.

(e) May install new and replace service drop wires from facilities existing within the right of way unless the new or replacement wire crosses the highway. Service wires over a highway must cross as near right angles as practicable.

(f) Shall obtain an occupancy permit for each installation or replacement or addition of wire, drop wire cable or other encroachment that crosses the highway or which encroaches upon the right of way even if it is not attached to or in contact with an existing facility within the right of way.

Sec. 40. 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 39, 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. 41. 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 an agreement to occupy or use the right of way unless the occupancy was established before the highway became a state highway.

2. 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 utility 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 does not confer upon the utility any rights to or interest in the underlying fee or other property interests therein of another person, if any.