

NMDOT BROADBAND and TELECOMM MANUAL



New Mexico Department of Transportation
Utility Bureau
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Approval and Implementation

The New Mexico Department of Transportation (NMDOT) BROADBAND and TELECOM MANUAL (BbTM) provides procedures pertaining to the placement of fiber optic, broadband, and telecom facilities within NMDOT rights-of-way and State owned property within New Mexico's state highway systems.

The BbTM will assist NMDOT employees, local public agencies, contractors, and those interested in utilizing rights-of-way and Department-owned property for installation of fiber optic, broadband and telecom facilities.

Submitted and Approved:

New Mexico Department of Transportation

_____ Date: _____
Michael Sandoval
Cabinet Secretary
New Mexico Department of Transportation

Federal Highway Administration

_____ Date: _____
J. Don Martinez
Division Administrator
Federal Highway Administration
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PURPOSE

NMDOT's goal in managing the Right-of Way, as defined below, is to preserve the integrity, safe operation, and function of the state highway system in compliance with all state and federal regulations. Any occupancy by a broadband facility shall be authorized, and reasonably regulated and managed. The purpose of this BROADBAND and TELECOMM MANUAL (BbTM) is to establish a framework for managing broadband, fiber optic and telecom facilities that are located, installed, maintained, repaired, removed, or relocated within the Rights-of-Way or Department-owned property of the state highway system. The BbTM has been established as an Administrative Procedural Manual. It is the responsibility of the user to refer to NMAC 17.4.2 for the complete and up-to-date legal foundation. The following policies and procedures are for accommodating and controlling access of fiber optic and wireless telecommunications facilities, small or micro cell facilities, wireless support structures and any other necessary equipment such as vaults, pedestals, control boxes, on the highway right-of-way and state owned property.

FHWA PROVISIONS

The BbTM has been accepted and approved by FHWA under the provisions of this section. Previously accepted policy and procedure statements currently applicable will remain in effect. The Department is responsible for full compliance with FHWA requirements whether or not the BbTM currently reflects proper coverage of the requirements. Changes to the BbTM because of new FHWA requirements or changes in state law, etc., shall be submitted to FHWA for acceptance within thirty (30) days after the Department receives notification of the required changes. FHWA approval of BbTM changes is required prior to implementation by the Department. In-house administrative changes to the BbTM shall be transmitted to FHWA for approval. The BbTM meets the requirements of 23 CFR 710.201 and is approved by the Office of the General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations.

AUTHORITY

The authority for the Utility Bureau is contained in the following:

New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission

New Mexico Statutes Annotated (NMSA) 1978, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199, which imposes civil and criminal penalties for its violation

New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer

United States Code of Federal Regulations (CFR) Title 23 and Title 49

New Mexico Eminent Domain Code, with Special Alternative Condemnation Procedures, Sections 42- 2-1 through 42-2-24 and 42A-1-1 through 42A-1-33, NMSA 1978, as applicable

New Mexico Relocation Assistance Act, Sections 42-3-1 through 42-3-15, NMSA 1978 New Mexico Real Estate Appraisers Act, Sections 61-30-1 through 61-30-23, NMSA 1978

Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (Uniform Act, Title 42 USC 4601)

Title 23 U.S.C. 645

DEFINITIONS

Capitalized terms defined in the foregoing pages or elsewhere in this BbTM shall have the same meaning when used in this BbTM unless the context clearly requires otherwise.

“**Access**” shall mean Permittee’s right to construct, install, maintain, repair and operate the Network in Department ROW made available to Permittee by Department pursuant to this Interim Agreement.

“**Interim Agreement**” means this Use and Occupancy Permit Provisions, including any exhibits, attachments, and any renewals or amendments thereof.

“**Antenna**” or “**Antennas**” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

“**Applicable Codes**” means: (1) Title 17.4.2 NMAC; (2) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including without limitation the National Electric Code, the National Electric Safety Code, American National Standards Institute & Telecommunications Industry Association (“ANSI/TIA”) Structural Standards, National Fire Protection Association (“NFPA”) standards, and the International Building Code; and (3) Federal, State, or local law applicable to activities undertaken pursuant to this Interim Agreement including applicable regulations of the Federal Communications Commission (“FCC”).

“**Department**” means the NMDOT, its successors and assigns, and its authorized agents, representatives, employees, or contractors.

“**Department Facilities**” means and includes Department-owned or managed property of all kinds, including without limitation Department-owned Service Structures, Department ROW and appurtenances Department may place in its ROW.

“Effective Date” means the last date on which all Parties to this Interim Agreement have executed this Interim Agreement.

“Facilities” The term includes: (a) equipment associated with wireless communications; (b) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and (c) fiber-optic cable (whether placed aurally or underground) and all conduit, innerducts, handholes and other structures ancillary to the provision of services over fiber-optic cable, placed by an entity subject to the jurisdiction of the New Mexico Public Regulatory Commission where such entity is not a carrier of last resort. The term does not include:

(a) an electric generator; (b) a Service Structure; (c) a Pole; or (d) a Macro Tower.

Intermediate Line Amplification” or **“ILA”** means (a) an amplification process in a radio transmitter which usually occurs prior to the final high power amplification or (b) a shelter containing equipment used for regeneration of optical signals.

“Macro Tower” means a guyed or self-supported pole or monopole of a height greater than fifty (50) feet in height, that supports or is capable of supporting Antennas.

“Permittee” means a person or entity that provides wireless service to the public, which includes any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a facility installed within Department rights-of-way and Department-owned property.

“Pole” means a vertical, wood, metal, or other approved materials, support structure.

“Regulated Substance” means any hazardous, extremely hazardous, or toxic substance or chemical, or waste as those terms are used in CERCLA (42 USC 9601 (14)) or SWDA (42 USC 6901), CAA (42 USC 7401), TSCA (15 USC 2601), EPCRTKA (42 USC 11001) or any similar federal or state law, or any pesticide, oil petroleum product or fuel; except only materials packaged and purchased for consumer use in containers not to exceed one gallon of fuel in a vehicle fuel tank.

“Service Structure” means a Department-owned or operated, vertical, wood, metal, or other approved materials, support structure located in Department ROW or Department owned property, including a similar structure that is owned or operated by Department and that Department specifies is available for the support of Permittee’s Facilities.

“Site” means the physical location within Department ROW or Department owned property where Permittee shall install, operate and maintain its Facilities, and is more particularly identified on Exhibit “A” hereto, which shall be amended from time to time to include new physical locations for Permittee’s Facilities.

“Third Party Use Fee” means the annual fee paid to the Department by third party fiber users of the facility placed by Permittee within the Department ROW, which permits third

party to utilize the facility.

USE AND OCCUPANCY PERMIT FOR WIRELESS, TELECOM AND FIBER OPTIC FACILITIES

In accordance with the provisions of the BbTM, the State Utility Engineer of the Department of Transportation or his designee may issue Use and Occupancy Permits with applicable terms and conditions on a competitively neutral and nondiscriminatory basis for use of public rights-of-way and state owned property to wireless telecommunications and broadband operators for the purpose of installation of wireless telecommunications equipment and facilities within state highway rights-of-way.

I. General Conditions and Standards For Installation and Operation of Wireless Telecommunication Tower Facilities and Installation of Fiber-Optic Cable

A. The rights and privileges granted to applicant shall be non-exclusive and shall not be construed to be any broader than those expressly set forth by the NMDOT. Any facilities placed on the highway right-of-way shall be placed in accordance with existing laws and the standards of the Department.

B. All facilities, after having been installed or erected, shall at all times be subject to inspection. The Department reserves the right to require such changes, additions, repairs, relocations and removal as may at any time be considered necessary to permit the relocation, reconstruction, widening and maintaining of the highway, to provide proper and safe protection of life and property on or adjacent to the highway, or to insure the safety of traffic on the highway. The cost of making such changes, additions, repairs and relocations shall be borne by the applicant, and all of the cost of the work to be accomplished under the permit shall be borne by the applicant.

C. If NMDOT has a highway improvement project that causes an interruption in service, any interruption in service as a result of the project is the sole responsibility of the facility owner. If the facility owner fails to relocate, any damage to the broadband facility as part of construction of the highway project will be solely at the owner's expense.

D. The proposed facilities, their operation and maintenance shall not interfere with the facilities or the operation or maintenance of the facilities of other persons, firms, corporations, or government entities previously issued a Use and Occupancy Permit. The proposed facilities shall not be dangerous to persons or property using or occupying the highway or using facilities constructed under previously granted Use and Occupancy Permits. It is the duty of the applicant to determine the existence and location of all facilities within the highway right-of-way.

E. Installations within the highway right-of-way shall be established in accordance with applicable provisions contained in the following:

1. AASHTO Guide for Accommodating Utilities within Highway Right-of-Way;

2. Code of Federal Regulations, 23 CFR 23;
3. National Electrical Safety Code (C2); and
4. 1996 Federal Telecommunications Act.

F. Those facilities not included in the above-mentioned documents shall be established in accordance with accepted practice. Where standards of the Department exceed those of the above cited codes, the standards of the Department shall apply. The Department reserves the right to modify its policies, as may be required, if conditions warrant.

G. Data relative to the proposed location must be submitted using the NMDOT E-Permitting Platform, relocation and design of fixtures or appurtenances, as may be required by the Department, shall be furnished to the Department by the applicant free of cost. The applicant shall make any and all changes or additions necessary in order to receive Departmental approval.

H. Cutting and trimming of trees, shrubs, etc., shall be in accordance with the Department's EDSM (Engineering Directives and Standards Manual) IV.2.1.6 and Vegetation Manual, as revised.

I. The applicant must agree to defend, indemnify, and hold harmless the Department and its duly appointed agents and employees from and against any and all claims, suits, liabilities, losses, damages, costs or expenses, including attorneys' fees sustained by reason of the exercise of the permit, whether or not the same may have been caused by the negligence of the Department, its agents or employees, provided, however, the provisions of this last clause (whether or not the same may have been caused by the negligence of the Department, its agents or employees) shall not apply to any personal injury or property damage caused by the sole negligence of the Department, its agents or employees, unless such sole negligence consists or shall have consisted entirely and only of negligence in the granting of a project permit or project permits.

J. The applicant is the owner of the facility for which use and occupancy is requested, and is responsible for maintenance of the facility. Use and occupancy granted by the Department is granted only insofar as the Department had the power and right to grant the use and occupancy permit. A use and occupancy permit and the permit provisions must be renegotiated with the Department before it can be re-assigned to another company.

K. Any use and occupancy permit granted by the Department is subject to revocation at any time.

L. Traffic control in instances where workmen, equipment or materials are in close proximity to the roadway surface, shall be in accordance with requirements contained in the manual on uniform traffic control devices (MUTCD). No vehicles, equipment and/or materials shall operate from, or be parked, stored or stockpiled on any highway or in an area extending from the outer edge of the shoulder of the highway on one side to the outer edge of the shoulder of the highway on the opposite side, including the median of any divided highway.

M. All safety precautions for the protection of the traveling public shall be observed. Delays to traffic will be minimized to the maximum extent possible during construction of

wireless telecommunication facilities. Acceptable delays will be determined and approved by the Department's District Traffic Engineer. Thereafter, no traffic delays are permissible. These precautions shall be in force and effect not only during the construction phase of the installation, but shall also be in force and effect at all times that maintenance is required. (See Manual on Uniform Traffic Control Devices-MUTCD.)

N. Access to facilities shall at all times be in compliance with 18.31.6 NMAC and the NMDOT State Access Management Manual (SAMM).

O. All provisions and standards contained in the use and occupancy permit relative to the installation of facilities shall apply to future operation, service and maintenance of facilities.

P. Drainage in highway side and cross ditches must be maintained at all times. The entire highway right-of-way affected by work under a permit must be restored to the satisfaction of the Department.

Q. Any non-metallic or non-conductive underground facility must be installed with a non-corrosive metallic wire or tape placed directly over and on the center marking tape-safety markers of the facility for its entire length within highway right-of-way.

R. Prior to performing any excavations, the applicant is required to call NM One-Call. If installing any underground facilities such as cable or conduits, the applicant must be a member of NM One-Call.

S. Depth of Cover. The minimum depth of cover for backfill and compaction for all excavations within the limits of the right-of-way shall be in accordance with NMAC 17.4.2., and with current Standard Specifications for Highway and Bridge Construction.

II. Specific Standards for Installation and Operation of Wireless Telecommunication Tower Facilities

A. There shall be no unsupported, aerial installation of horizontal or longitudinal overhead power lines, wireless transmission lines, or other overhead wire lines, except within the confines of the wireless operator's facility as described herein.

1. Coaxial transmission lines, tower light power cables, and other wires or cables necessary for the proper and safe operation of the telecommunication facility required to crossover from the operator's equipment pad, shelter, or other means of communications equipment housing, to the vertical tower structure, shall be supported along their entire horizontal length by a structural cable trough and shall not exceed 25 feet in length.

2. Electrical utility lines, wireline telephone lines, and other utility services transmitted via wireline shall be installed underground in accordance with the National Electrical Code, and the Department's specifications.

3. It is the responsibility of the wireless facility operator to negotiate with

owners of preexisting utilities in order to have the preexisting lines relocated to accommodate these new installations.

4. Joint use agreements and existing permits and servitudes will be taken into consideration in determining areas for installations.

B. Backfill and compaction for all excavations within the limits of the right-of-way shall be in accordance with NMAC 17.4.2., and with current Standard Specifications for Highway and Bridge Construction

C. All environmental restoration activities associated with facility owners disturbance of the ROW shall be done in accordance with the environmental commitments issued with the permit.

D. Installations through drainage structures are strictly prohibited.

III. Fees for Wireless Telecommunications Installations

A. The following fees shall apply to wireless telecommunications installations placed within state highway rights-of-way or on Department-owned property. Any change in location to Site may cause a change within the described fee schedule and payment to Department. Fees are based on the type of tower, which must be less than 50 feet. Antennae are also included in the following fee schedule.

- 1. Self-Supporting Tower/Antenna.....\$3,500
- 2. Monopole/Antenna.....\$2,000
- 3. Attachments to Existing Utility/Light Poles.....\$1,500
- 4. Co-Location on NMDOT Tower.....\$3,500

B. The following fees for towers over 50 ft. are based on geographic location and average daily traffic counts:

<u>Location</u>	<u>Fee per year</u>
URBAN or where ADT is 2,000 or more	\$9,000
SUBURBAN or where ADT is less than 2,000 (and not deemed RURAL)	\$6,000
RURAL along states highways and local roads in rural areas	\$3,000
Tenants on Existing Self-Supporting Tower	\$3,500

C. All permit fees must be paid to the Department using the NMDOT E-Permitting Platform. The Department will not accept cash.

D. The Department may waive fees for those permit applicants who erect facilities, attachments or cameras for the use of the Department or other state agencies or political

subdivisions.

E. NMDOT communications equipment shall be allowed to co-locate on wireless facility towers, at no cost to NMDOT provided that the tower's structural capacity is adequate to safely support such additional use; the existing space on the tower is at the height NMDOT desires; and no technical factors exist which would prohibit such a co-location.

F. Each wireless facility operator which co-locates on existing wireless telecommunication facilities operating within Department rights-of-way shall be subject to the same conditions and requirements which apply to the owner of the tower. The co-locator shall meet all Departmental standards and policies and shall access the facility only after receiving prior written permission from the Department.

G. Third-Party Equipment Installation. Prior to negotiating for any third-party to install any equipment on any portion of the Site constructed by the facility owner, the owner shall provide Department prior notice of such use. Such installations of equipment shall be consistent with the terms of this Manual, NMAC 17.4.2, and Department approval.

H. Attachments to Existing Bridge Structures

1. No authorized attachment to an existing structure shall cause technical interference with any equipment on the facility.

2. Plans will be submitted to the bridge design engineer and the structures and facilities maintenance engineer for approval.

I. Access Requirements

1. Access to the telecommunication facilities located adjacent to and crossing controlled access highways shall be in accordance with NMAC 17.4.2.

IV. Specific Standards for Installation of Fiber-Optic Cable

A. All materials and workmanship shall conform to the requirements of the applicable industry code and to Department specifications.

B. Backfill and compaction for all excavations within the limits of the right-of-way shall be in accordance with NMAC 17.4.2., and with current Standard Specifications for Highway and Bridge Construction.

C. All environmental commitments for all excavations within the limits of the right-of-way shall be in accordance with NMAC 17.4.2., and with current Standard Specifications for Highway and Bridge Construction.

D. Access to the telecommunication facilities located adjacent to and crossing controlled access highways shall be in accordance with NMAC 17.4.2.

E. Each occasion of access shall be pre-approved by the District Office.

F. Repairs beneath the roadway shall not be allowed if such repairs necessitate open cutting (open trenches) the highway. If a problem occurs with a line crossing, the utility company must install a new crossing. The utility company must bear the total cost.

G. The NMDOT District Office shall be contacted and notified and shall give Departmental approval whenever the installation must be accessed, including access for routine maintenance. In emergency situations, as much notice as possible must be given.

H. Repeater boxes shall be placed outside of the right-of-way, unless otherwise approved by the Department.

I. Fees

1. A flat fee of \$5,000 per mile shall apply to fiber optic telecommunications installations placed within state access-controlled highway rights-of-way.

2. For other locations within state's rights-of-way or Department-owned property, the following fee structure will apply.

<u>Rate Class</u>	<u>Location</u>	<u>Annual Fee</u>
L	1. Along local roads in rural areas	\$1,000/mile
	2. Along State Highways in rural areas:	
R1	a. Where ADT is less than 2,000	\$1,000/mile
R2	b. Where ADT is 2,000 or more	\$2,000/mile
U3	3. Along roads and streets inside urban areas	\$5,000/mile

3. Annual fees shall continue to be due at the end of the Departments fiscal each year so long as the property on which the utility facilities are located remains public road right-of-way or until said facilities are abandoned as evidenced by written notification to the Department.

4. The department may reduce fees for those applicants who install shared resources or facilities on behalf of the Department in order to conduct departmental work.

5. Fees shall be calculated to the nearest tenth (0.1) mile.

6. In lieu of fees required the Department may at its option enter into an agreement with a facility owner for payment of blanket (lump sum) fees to cover all operations of the utility on State rights-of-way on an annual basis. Such agreements and fees shall take into consideration the mileage of facilities in place and the amount of current and anticipated permit work within the rights-of-way and the estimated costs to the Department of the utility's operations. Any such agreements shall provide for annual adjustments of the fee amount.

