

72-7-108 Longitudinal telecommunication access in the interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.

(1) As used in this section:

- (a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters.
- (b) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the learning purposes of higher and public education.
- (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, and device used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical signal for communication purposes.

(2)

- (a) Except as provided in Subsection (4), the department may allow a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility.
- (b) The department shall enter into an agreement with a telecommunication facility provider and issue a permit before granting it any longitudinal access under this section.
 - (i) Except as specifically provided by the agreement, a property interest in a right-of-way may not be granted under the provisions of this section.
 - (ii) An agreement entered into by the department under this section shall:
 - (A) specify the terms and conditions for the renegotiation of the agreement;
 - (B) specify maintenance responsibilities for each telecommunication facility;
 - (C) be nonexclusive; and
 - (D) be limited to a maximum term of 30 years.

(3)

- (a) The department shall require compensation from a telecommunication facility provider under this section for longitudinal access to the right-of-way of a highway on the interstate system.
- (b) The compensation charged shall be:
 - (i) fair and reasonable;
 - (ii) competitively neutral;
 - (iii) nondiscriminatory;
 - (iv) open to public inspection;
 - (v) established to promote access by multiple telecommunication facility providers;
 - (vi) established for zones of the state, with zones determined based upon factors that include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;
 - (vii) established to encourage the deployment of digital infrastructure within the state;
 - (viii) set after the department conducts a market analysis to determine the fair and reasonable values of the right-of-way based upon adjacent property values;
 - (ix) a lump sum payment or annual installment, at the option of the telecommunications facility provider; and
 - (x) set in accordance with Subsection (3)(f).

(c)

- (i) The compensation charged may be cash, in-kind compensation, or a combination of cash and in-kind compensation.

- (ii) In-kind compensation requires the agreement of both the telecommunication facility provider and the department.
 - (iii) The department shall, in consultation with the Telecommunications Advisory Council created in Section 72-7-109, determine the present value of any in-kind compensation based upon the incremental cost to the telecommunication facility provider.
 - (iv) The value of in-kind compensation or a combination of cash and in-kind compensation shall be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.
- (d)
- (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.
 - (ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.
- (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five years and any adjustments warranted shall apply only to agreements entered after the date of the new market analysis.
- (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation for any longitudinal access granted under this section.
- (4) The department may not grant any longitudinal access under this section that results in a significant compromise of the safe, efficient, and convenient use of the interstate system for the traveling public.
- (5) The department may not pay any cost of relocation of a telecommunication facility granted longitudinal access to the right-of-way of a highway on the interstate system under this section.
- (6)
- (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.
 - (b) Any telecommunications capacity acquired as in-kind compensation shall be used:
 - (i) exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers; and
 - (ii) as determined by the department after consultation with the Telecommunications Advisory Council created in Section 72-7-109.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:
- (a) governing the installation, operation, and maintenance of a telecommunication facility granted longitudinal access under this section;
 - (b) specifying the procedures for establishing an agreement for longitudinal access for a telecommunication facility provider;
 - (c) providing for the relocation or removal of a telecommunication facility for:
 - (i) needed changes to a highway on the interstate system;
 - (ii) expiration of an agreement; or
 - (iii) a breach of an agreement; and
 - (d) providing an opportunity for all interested providers to apply for access within open right-of-way segments.
- (8)

- (a) Except for a right-of-way of a highway on the interstate system, nothing in this section shall be construed to allow a highway authority to require compensation from a telecommunication facility provider for longitudinal access to the right-of-way of a highway under the highway authority's jurisdiction.
- (b) Nothing in this section shall affect the authority of a municipality under:
 - (i) Section 10-1-203;
 - (ii) Section 11-26-1;
 - (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
 - (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.
- (9) Compensation paid to the department under Subsection (3) may not be used by any person as evidence of the market or other value of the access for any other purpose, including condemnation proceedings, other litigation, or the application of rates of taxation or the establishment of franchise fees relating to longitudinal access rights.

Amended by Chapter 382, 2008 General Session