



## **1.0 General**

On December 3, 2021, the Federal Highway Administration (FHWA) implemented a new rule on broadband infrastructure deployment in the right-of-way (ROW) of applicable federal-aid highway projects. This rule only applies to WisDOT highway improvement projects on state trunk highways (STHs). The rule does not have any requirements for broadband projects on STHs that are unrelated to WisDOT highway improvement projects.

### **1.1 Legal Authority**

The [2018 Consolidated Appropriations Act](#), Division P, Title VI ("MOBILE NOW Act"), Section 607<sup>1</sup>, Broadband Infrastructure Deployment ([47 U.S.C. 1504](#)), directed the U.S. Secretary of Transportation to promulgate regulations ensuring that each state Department Of Transportation (DOT) meet specific registration, notification, and coordination requirements to facilitate broadband infrastructure deployment in the ROW of applicable federal-aid highway projects. Accordingly, the new FHWA rule is required by statute to implement Section 607 requirements.

### **1.2 Overview**

The FHWA rule, which aims to facilitate the installation of broadband infrastructure, applies to each state DOT that receives federal funds under [Chapter 1 of title 23, U.S.C.](#) The MOBILE NOW Act defines the following terms that are used in the rule:

- **Appropriate state agency:** A state governmental agency that is recognized by the executive branch of the state as having the experience necessary to evaluate and carry out projects relating to the proper and effective installation and operation of broadband infrastructure.
- **Broadband infrastructure:** Any buried, underground, or aerial facility, and any wireless or wireline connection, that enables users to send and receive voice, video, data, graphics, or any combination thereof.
- **Broadband infrastructure entity:** Any entity that owns or operates broadband infrastructure and provides broadband services in a manner consistent with the public interest, convenience, and necessity, as determined by the State of Wisconsin. Throughout this policy, the term "company" is used to represent "broadband infrastructure entity."

### **1.3 Broadband Speed**

The official Federal Communications Commission definition of broadband speed is at least 25 Mbps (megabytes per second) download and 3 Mbps upload.

### **1.4 Rule Implementation**

The FHWA rule does not establish a mandate or requirement that a state install or allow the installation of broadband in STH ROW. WisDOT has defined broadband as a utility per [HMM 09-15-05](#), 2.0 (#12) and permitted it within STH ROW since the mid-1990s and therefore decided to implement the new rule.

## **2.0 Rule Requirements**

In s. 645.307(a), FHWA establishes four new requirements of Section 607 of the MOBILE NOW Act, which are discussed in sections 2.1-2.5. Unrelated to this rule, additional guidance on broadband infrastructure fees for the longitudinal occupation of controlled-access highway ROW is provided in [HMM 09-15-40](#).

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<sup>1</sup> All citations to section (s.) 607 in this policy reference federal law.

## 2.1 Broadband Utility Coordinator

Section 645.307(a)(1) requires WisDOT, in consultation with appropriate state agencies, to identify a broadband utility coordinator who is responsible for facilitating the infrastructure ROW efforts within the state. WisDOT has designated the following personnel for this position.

<b>Primary Contact:</b> Kathy Jennings Highway Maintenance Engineer (608) 261-8976 <a href="mailto:kathy.jennings@dot.wi.gov">kathy.jennings@dot.wi.gov</a>	<b>Office Address:</b> Wisconsin DOT Bureau of Highway Maintenance 4822 Madison Yards Way, 5 <sup>th</sup> Floor South Madison, WI 53705
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## 2.2 Broadband Company Registration

Section 645.307(a)(2) requires WisDOT, in consultation with appropriate state agencies, to establish a registration process for broadband companies that want to be included with the deployment program detailed in this policy. To do this, WisDOT has established a [website](#). Broadband companies interested in placing broadband infrastructure on STH ROW must sign-up through the website.

## 2.3 Annual Notification of the WisDOT Highway Program

Section 645.307(a)(3) requires WisDOT, in consultation with appropriate state agencies, to establish a process for electronically notifying broadband companies identified under s. 645.307(a)(2), on an annual basis, of WisDOT's highway improvement program and providing other notifications as necessary. Broadband companies that have registered through WisDOT's [website](#) will receive these notifications.

The notification process consists of an email informing broadband companies of where to find WisDOT's highway improvement program information, which is currently available at these WisDOT websites:

- [6-year improvement program \(list\)](#)
- [6-year improvement program \(GIS version\)](#)
- [2-year improvement program \(GIS version\)](#)

## 2.4 Coordination with Various Plans

Section 645.307(a)(4) requires WisDOT, in consultation with appropriate state agencies, to coordinate initiatives<sup>2</sup> under Section 607 of the MOBILE NOW Act with other:

1. Statewide telecommunication and broadband plans
2. State and local transportation plans
3. Land use plans

All coordination should include strategies to minimize repeated excavations involving broadband infrastructure installation in the ROW.

## 2.5 No Disadvantages

The FHWA rule mandates that WisDOT must carry out any appropriate measures to ensure existing broadband companies are not disadvantaged, as compared to other broadband companies, with respect to this program.

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<sup>2</sup> "Initiatives" means the event, occurrence, etc. when a highway improvement project accommodates a broadband infrastructure project.