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	<b>COMMISSION POLICY</b>	<b>IDENTIFIER</b>	<b>EFFECTIVE DATE</b>			
		10014	03-31-11			
		<b>SUPERSEDES</b>	<b>DATED</b>			
		10014 10093	02-23-95 07-27-00			
<b>RESPONSIBLE ORGANIZATION:</b>		Bureau of Highways				
<b>SUBJECT:</b>	Utility Accommodation Policy					

## I. PURPOSE

To regulate the accommodation within state highway right-of-way (ROW) of private lines and utility facilities, as defined in Part IV hereof: This policy shall also be the basis for the evaluation and approval by the Michigan Department of Transportation (MDOT) for requests to construct, maintain or operate upon, over, across, or under state highways, private lines, and utility facilities as herein defined. This policy is applicable to state highways under the jurisdiction of MDOT.

Federal and state statutes acknowledge it is in the public interest for utility facilities to be accommodated on state highway ROW. MDOT has statutory authority to regulate utility accommodations within highway ROW through a permit process as governed by *23 Code of Federal Regulations (CFR) Part 645* and state laws. Such use and occupancy shall not adversely affect highway traffic and safety, impair highway aesthetic quality, and shall not conflict with federal, state, and local laws, or regulations.

The criteria under which such facilities will be permitted on state highway ROW are in accordance with:

- American Association of State Highway and Transportation Officials' publication *A Policy on the Accommodation of Utilities within Freeway ROW*, copyright October 2005.
- American Association of State Highway and Transportation Officials' publication *A Guide for Accommodating Utilities within Highway ROW*, copyright October 2005.
- Federal Highway Administration (FHWA) *Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*, copyright January 2003.

Circumstances where differences arise between the above publications and this policy, the conditions set forth herein shall apply.

It is not intended that this policy serve as the basis for determining financial responsibility for replacing or adjusting facilities. It is limited to matters which are the responsibility of MDOT as jurisdictional authority of the state highway system and its safe operation. This policy will not be interpreted or applied in a manner in violation of, or inconsistent with federal or state law.

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## II. STATE STATUTE-LEGAL AUTHORITY

The statutory authority of telegraph, telephone, power, and other public utility companies, cable television companies and municipalities to construct and maintain facilities upon, over, across, or under state highway Right-of-Way emanates from Act 368 Public Acts of 1925, MCL 247.171 et seq, available at [www.legislature.mi.gov](http://www.legislature.mi.gov).

## III. TRIBAL GOVERNMENT

Executive Directive No. 2004-5: MDOT reaffirms recognition and fully supports the government-to-government relationship that exists between the State of Michigan, its departments and agencies, and the federally recognized Indian tribes of Michigan. Agreements between MDOT and recognized Indian tribes will be in full accordance with the Executive Directive.

## IV. DEFINITIONS

**License Agreement** - A companion document which specifies a duration and fee to a permit granted to occupy or engage in a specified activity within the ROW.

**Limited Access ROW** - A divided arterial highway with full control of access.

**Permit** - A legal document used to grant permission to private, governmental, and public entities for occupying, constructing, operating, using, or maintaining specified operations or facilities within the state highway ROW.

**Private Lines** - Privately owned facilities which convey or transmit the commodities outlined in the definition of *Utility Facilities and/or Utilities* of this section, but devoted exclusively to private use.

**ROW** - Real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway under MDOT's jurisdiction, in which federal-aid or federal highway funds are or may be involved in any stage of development. This includes lands acquired for scenic areas adjacent to highways, rest areas, roadside parks, scenic turnouts or overlooks, or access to lakes and rivers.

**State Highways** - Roadways, regardless of designation, under the jurisdiction of MDOT.

**Utility Facilities and/or Utilities** - Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable

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television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

## V. APPROVAL

All installation, operation, and maintenance of private lines and utility facilities made on state highway ROW shall be subject to the approval of MDOT. This approval shall be granted in accordance with MDOT permit procedures, as outlined in the Construction Permit Manual, unless otherwise authorized by agreement or property right. It is the responsibility of the party requesting use of the state highway ROW to apply for and obtain the necessary permits from MDOT.

To protect the state highway interest, MDOT will prescribe the following within the conditions of the permit:

- Specifications for and methods of installation.
- Requirements for preservation and restoration of highway facilities, appurtenances, natural features, and vegetation on the state highway ROW.
- Limitations on the activities within the state highway ROW.

In addition to MDOT approval, the following uses of state highway ROW shall be subject to prior review and approval of FHWA.

- Any utility or private line use not in accordance with this policy.
- Breaches of limited access ROW for the purpose of providing access adjacent to public or private lands.
- Situations for which a license agreement is required.

## VI. REQUIREMENTS

1. Use of state highway ROW for any purpose shall require MDOT approval.
2. Consideration shall be given by MDOT to the effect of the requested occupancy and use of the state highway ROW on the following:
  - Structural integrity of the highway.

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- Reasonably safe operation, maintenance, and future use of the highway.
  - Highway aesthetic quality and reasonable protection of roadside vegetation.
  - Environmental impacts.
  - Costs and/or difficulty of highway construction and maintenance.
3. Facilities allowed on state highway ROW will be placed in a manner which will not impair the highway or adversely affect highway or traffic safety.
  4. Landscape plantings or natural trees of value shall be replaced with acceptable species of comparable value and at a location determined by MDOT.
  5. Aboveground facilities shall be in compliance with MDOT's current clear zone guidelines. Longitudinal occupancy of limited access state highway ROW, by aboveground facilities is prohibited.
  6. The party requesting approval shall take, provide, and maintain all necessary precautions to prevent injury or damage to persons and property affected by operations and shall use traffic control devices which are in accordance with the *Manual of Uniform Traffic Control Devices*.
  7. Use of state highway ROW within areas of scenic enhancement, when such ROW has been acquired with federal funds, will be in compliance with 23 CFR 645.209 (h). Areas of scenic enhancement include scenic strips, overlooks, rest areas, recreation areas, the state highway ROW adjacent thereto, and state highway ROW which passes through public parks and historic sites.
  8. Where a utility has a compensable interest in the land occupied by its facilities and such land is to be jointly used for state highway purposes, MDOT and the utility shall agree, in writing, as to the obligations and responsibilities of each party.
  9. Privately owned facilities may be allowed to cross state highway ROW, preferably under the roadway and at a right angle. Crossings should be for the purpose of serving a general area rather than providing individual services, unless extenuating circumstances necessitate such crossings. Longitudinal occupancy of the free access ROW by privately-owned facilities requires a public interest statement and one of the following: a finding of significant economic hardship, unavailability of practicable alternatives, or other extenuating circumstances. Longitudinal occupancy of the limited access ROW will not normally be allowed, unless such occupancy pre-exists

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the establishment of the ROW or is necessitated as a result of a highway construction project.

10. Location of light standards and utility poles on free access roadways will be governed by the current MDOT guideline entitled *Guideline for Placement of Light Standards and Utility Poles on Free Access Roadways*.
11. Maintenance of facilities within limited access highways shall be from city streets, county roads, or service roads, unless such alternatives are not practical as determined by MDOT. When access for facility maintenance must be from the limited access ROW, a permit shall be obtained from MDOT.
12. Longitudinal use of limited access ROW shall comply with the following:
  - Use will be limited to continuous type facilities which will not intermittently extend service outside the limited access ROW. Connections for service, distribution, or any other purpose shall be allowed at grade separations, interchanges, and the facility's entrance and exit point(s) to the limited access ROW.
  - Facilities shall be underground and placed in a manner that will not increase state highway maintenance costs.
  - MDOT may require installation of multi-duct facilities for short distances where justified by field conditions.
  - The preferred location is within an area along the outer 15 feet of the state highway ROW.
    - MDOT may allow facilities to be placed in an alternate location such as outside the top of ditch slope or bottom of slope stake line, median, or as otherwise determined by MDOT.
    - The first facility shall be placed as close as practicable to the ROW line. Successive facilities shall be placed parallel and closer to the roadway than the first facility.
    - Facilities shall be placed within 1½ feet, in either parallel direction of the permitted facility.
  - All facilities shall be placed using installation methods that minimize disruption to the limited access ROW.

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- The top of an access chamber (manhole) shall be at ground surface elevation and shall have the identification marking to indicate the utility ownership.
  - Aboveground facilities requiring regular maintenance shall be placed outside the limited access ROW.
13. Wireless telecommunication service is not a public utility for the purpose of utilization of state highway ROW. However, MDOT may approve the construction and maintenance of wireless telecommunication facilities within state highway ROW upon compliance with MDOT's Construction Permit Manual. All requests for wireless telecommunications facilities shall be processed through the State of Michigan's procedures.
14. Renewable energy facilities may be allowed to occupy state highway ROW, by means of a permit and/or license agreement, dependent upon ownership (public or private), type of state highway ROW, and proposed facility location (aboveground or underground).

**VII. DISCONTINUED USE OF FACILITIES**

**Aboveground Facilities** - When a utility discontinues use of an aboveground facility, the facility shall be entirely removed from the state highway ROW within one year. All removal costs are the responsibility of the utility.

**Underground Facilities** - When a utility discontinues use of an underground facility and the facility remains in the state highway ROW, the utility shall retain a record of the out-of-service facility. MDOT may require out-of-service facilities to be completely removed, partially removed, capped, or filled. All removal costs are the responsibility of the utility.

**VIII. EMERGENCY OPERATIONS**

When a utility facility is damaged as to constitute a danger to life and/or property, the most expeditious route may be used to access the facility. The work is to be completed in a manner which will provide the traveling public with maximum possible safety. Notice shall be provided to the nearest police authority and MDOT as soon as possible.

Adopted by the Michigan State Transportation Commission on March 31, 2011.