



INTERGOVERNMENTAL ADVISORY COMMITTEE
TO THE
FEDERAL COMMUNICATIONS COMMISSION
ADVISORY RECOMMENDATION NUMBER 2013 – 8
Regarding “Dig Once” Policies
to Help Create a Robust, National Digital Infrastructure

I. INTRODUCTION

The development of a national broadband/digital infrastructure is a stated goal of the White House, Congress and the FCC. In the June 14, 2012 “Executive Order -- Accelerating Broadband Infrastructure Deployment,”¹ the President directed a working group to develop policies for the deployment of broadband and digital infrastructure. The goal is to facilitate broadband deployment on Federal lands, buildings, and rights-of-way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in unserved and underserved communities.

There is also a recognition that much of the cost of broadband is in the excavation and repairing of public rights-of-way. For example, the “National Broadband Plan, Chapter 6 – Infrastructure,”² noted that *“wireless and wired networks rely on cables and conduits attached to public roads, bridges, poles and tunnels. Securing rights to this infrastructure is often a difficult and time-consuming process that discourages private investment.”* The National Broadband Plan also recommended that *“Congress should consider enacting ‘dig once’ legislation applying to all future federally funded projects along rights-of-way (including sewers, power transmission facilities, rail, pipelines, bridges, tunnels and roads).”* Dig once requirements are those designed to reduce the number and scale of repeated

¹ <http://www.whitehouse.gov/the-press-office/2012/06/14/executive-order-accelerating-broadband-infrastructure-deployment>

² <http://www.broadband.gov/plan/6-infrastructure/> (Emphasis added).

excavations for the installation and maintenance of broadband facilities in public rights-of-way.³

II. THE ISSUE

The cost of building a national broadband or digital infrastructure is enormous and requires both public and private investment to accomplish the goal. Use of the public rights-of-way is a major factor in accomplishing this goal. Eighty to ninety percent of the costs associated with laying the infrastructure are in the excavation and repair of the rights-of-way when the work requires excavation of the roadway.⁴ Streamlining this process can reduce the cost and increase the speed of broadband deployment while minimizing stress on the pavement and traffic disruption. Federal, state, county, tribal and local funds are regularly used for road and public works improvements. Much of this activity disturbs and uses the public rights-of-way, and allows opportunities for installing conduit at the times public works projects are undertaken. Indeed, local governments throughout the nation have taken the lead in adopting local regulations that require conduit to be deployed in public rights-of-way, whenever street excavation is done.⁵

At the same time, federal policy and regulations must recognize the legitimate interests of state, local and tribal entities in managing the private use of public assets such as public rights-of-way. Taxpayers invest millions of dollars each year in the acquisition, maintenance and oversight of rights-of-way. The regulatory oversight of rights-of-way has far less impact on broadband deployment than the overall cost of construction. The fact that the United States has its most robust broadband deployment in urban, developed areas which tend to involve more regulation and fees, compared to far less deployment in rural areas with little to no regulation or fee requirements, demonstrates that state, local and tribal oversight of their public rights-

³ Executive Order -- Accelerating Broadband Infrastructure Deployment - <http://www.whitehouse.gov/the-press-office/2012/06/14/executive-order-accelerating-broadband-infrastructure-deployment>, at Sec. 5 (v)(b) (Emphasis added).

⁴ Federal Highway Administration Estimates- <http://www.fhwa.dot.gov/policy/otps/workplan.pdf> at 16.

⁵ Communities now using “dig once” policies include: Chattanooga, TN, Chicago, IL, Portland, OR, and Seattle, WA.

See also the “Digital Arizona Highway Act of 2012” (broadband conduit installation law expands use of existing state roadway rights-of-way to bury empty fiber optic conduits as part of state highway construction) and Section 9-131 of the Illinois Highway Code entitled “installation of fiber-optic network conduit” (authorizes installation of fiber-optic network conduit “in every new State-funded construction project that opens, bores, or trenches alongside a State-owned infrastructure, including, but not limited to, roadways and bridges.”).

of-way property is not a significant factor in private sector decisions related to broadband deployment.

Further, our tri-partite system of government, and the Tenth Amendment to the United States Constitution require that the governmental entities that own property have the control and decision making authority over the use of that property. Therefore, while federal dig once policies can and should mandate regulations with respect to federally owned lands, such policies should encourage, recommend and offer best practices for state, local and tribal governments in the development and implementation of these dig once policies. They must also respect and avoid mandates that seek to nullify the legitimate interests of state, local and tribal governments in the management of their property.

III. RECOMMENDATIONS

The IAC recommends that the Commission join with it to advocate throughout the Federal government that governmental entities employ “dig once” policies tied to road and public works projects that disturb and use the public rights-of-way. The policies would require the Federal agency planning to dig in the Federal rights-of-way to: 1) notify parties that may be interested in placing fiber or conduit in the trench of the proposed work; the date the trench is scheduled to be open, the conditions of use, and the contact for more information; and 2) lay conduit in public Federal rights-of-way and easements as a component of the public works projects. Such dig once policies would both accommodate and facilitate all future public and private fiber deployments. To promote this goal:

1. Congress or the Administration should mandate these dig once policies with respect to all Federally owned property. Projects tied to Federal funds should require deployment of conduit.
2. The Federal government should advocate and encourage, where feasible, these dig once policies for state, local and tribal governments.
3. The IAC, with support from the Commission staff, should work with the national associations representing state, local and tribal entities, to develop model legislation and ordinances, and recommended best practices, with regard to dig once policies, recognizing that there is no one-size-fits-all regulatory framework that will work in every community.
4. The IAC and Commission staff should endeavor to complete this work, and be in a position for the Commission to jointly announce with our national association partners, dig once model legislation and ordinances, and recommended best practices, by a year from the approval of this recommendation.

Approved on this 31st day of July, 2013.

INTERGOVERNMENTAL ADVISORY COMMITTEE

Joyce Dickerson, Chair