

August 13, 2019

To: ALL Executive Branch Agencies Engaged in Resource Sharing
From: Secretary of Department of Information Technology
Subject: Private Industry Installation and Use of Fiber Optic Cable in State Rights-of-Way
Short Title: RSA-PGM-2019-01

1. Purpose. To provide programmatic guidance on DoIT's policy implementation of the Resource Sharing Law ("RSL"), Annotated Code of Maryland, State Finance & Procurement Article ("SF&P") § 3A-307(c), as it applies to certain private industry installation and use of fiber optic cable in State rights-of-way where the user has a separate statutory right to use of and access to the right-of-way.

2. Background. Under the RSL, State units must generally defer to DoIT's oversight and approval process when considering a proposal to allow private industry to use a State resource such as a State right-of-way for an information technology purpose. Fiber optic technology now permits multiple telecommunication services such as telephone, cable television, and broadband internet to be provided through the same line. However, private industry may have an independent statutory right to access and use State rights-of-way to provide one or more (but not all) of those services. For example, a telephone company, pursuant to Annotated Code of Maryland, Public Utilities Article §§ 5-410 & 8-103, may have the statutory right to install telephone lines in State rights-of-way but not lines providing broadband internet and a cable television company may have the independent right to install lines in public rights-of-way for the provision of cable TV service pursuant to a franchise granted by a county or municipality under Local Government Article § 1-708. Historically, requests for the ability to install such facilities in State rights-of-way from such entities were processed without regard to the RSL, and DoIT has not applied the requirements of the RSL to those requests.

3. Policy. Where the Maryland General Assembly has separately authorized the right to install lines in State rights-of-way as described above, DoIT has determined, as a matter of policy, that using the same fiber optic cable to provide additional telecommunications services does not ordinarily place any significant additional burden on State resources. In such cases, DoIT views the proposed use of the State right-of-way as approved by the General Assembly and has concluded that additional review and valuation by DoIT is not required. Accordingly, where an applicant for a utility permit has a statutory right to install lines in the right-of-way and such lines are capable of providing multiple services, the permitting agency—subject to any pertinent requirements under federal law—is not required to submit such applications for additional review and valuation by DoIT, notwithstanding that additional services may be provided through the same lines.

4. Procedure. Where an applicant has an existing statutory right to install telecommunications lines in State rights-of-way, State Agencies need not refer permit applications to DoIT for review and valuation under the RSL and may continue to review those applications in accord with the Agency's regular internal procedures. Where an applicant is otherwise eligible for a permit, the RSL is not a barrier to permit issuance.

a. When a State Agency receives a permit application to install fiber optic cable in a State right-of-way from such an applicant, the State Agency should:

i Validate the applicant's claim of a legal right, including requesting supporting documentation, if necessary.

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ii. If validated, use the Agency's regular internal procedures to approve or disapprove the permit request in the ordinary course.

iii. Maintain a digital file of each permit granted that includes fiber optic installation as well as a log of the salient details of those permits.

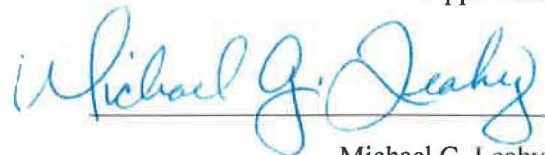
iv. Send DoIT a copy of the log of approved fiber optic permits monthly.

b. If the applicant does not have a statutory right to install telecommunications lines in the State right-of-way, or if the additional services create an increased burden on State resources, as determined by DoIT, the permit should be considered a resource sharing proposal and should be processed in accordance with the established Resource Sharing Agreement ("RSA") business process.

5. Conclusion. Agencies should consult with their assigned legal counsel when evaluating a nonstandard permit application. Agencies should also advise DoIT of any questionable permit request which requires additional policy consideration due to the potential application of the RSL, including but not limited to potential significant burdens on State resources.

6. Updates. Updates to this Program Guidance Memorandum (PGM) will be published as necessary.

Approved:



Michael G. Leahy
Secretary

Department of Information Technology

2018 Maryland Code
Public Utilities
Division I - Public Services and Utilities
Title 8 - Telegraph and Telephone
Companies
Subtitle 1 - General Provisions
§ 8-103. Construction of lines and
fixtures -- In general

Universal Citation: MD Pub Util Code § 8-103 (2018)

- (a) Authority to construct lines and fixtures; limitation. --
 - (1) A telegraph or telephone company or a corporation authorized under § 5-410(a)(3) of this article may construct lines:
 - (i) through the State;
 - (ii) from or to any point in the State;
 - (iii) on the boundaries of the State;
 - (iv) along and on a road, street, or highway; and
 - (v) across bridges and the waters in the State.
 - (2) The company may erect fixtures, including poles, piers, or abutments necessary to sustain the lines.
 - (3) This section does not authorize a company to construct a bridge across any of the navigable waters of the State.

- (b) Fixtures not a public nuisance. -- A line constructed under subsection (a) of this section is not a public nuisance and is not subject to abatement by a private party if the line does not interfere with or disturb:
 - (1) the public use of roads, highways, and bridges;
 - (2) the navigation of the waters of the State; or
 - (3) the convenience of a landowner more than is unavoidable.