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BEFORE THE
SUBCOMMITTEES ON SURFACE TRANSPORTATION
AND ECONOMIC DEVELOPMENT OF THE
HOUSE COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

APRIL 15, 1986

HEARING ON THE INSTALLATION OF FIBER OPTIC CABLE
LONGITUDINALLY ON THE RIGHT-OF-WAY OF THE
INTERSTATE HIGHWAY SYSTEM

I am pleased to have the opportunity to appear and discuss the issue of fiber optic communication systems and use of Interstate right-of-way. This is a very timely matter for us as over the past 2 years several firms and organizations, including both public utilities and private firms, have approached the Federal Highway Administration (FHWA) seeking access to the Interstate System right-of-way for installations of fiber optic communication systems. Government policy must keep pace with advances in technology.

The FHWA's longstanding policy controlling use of freeway right-of-way of Federal-aid highway projects is found in FHWA's utility accommodation regulations (23 CFR 645, Subpart B). The policy recognizes the need for allowing utility installations to cross over or under Interstate highway right-of-way provided certain conditions are satisfied as it is not intended that an Interstate highway act as a barrier to necessary and orderly land use and development. The current FHWA policy discourages longitudinal utility use of the Interstate right-of-way within the access control limits, but does not establish an outright

prohibition of such use since it is recognized that "special case exceptions" might be allowed when the conditions encountered are extraordinary, costly, and when the safety on the traveling public will not be impaired.

Full access control is one of the principal safety design features of the Interstate System. This design standard was established in 1956 at the initiation of the Interstate program by the FHWA in cooperation with the States as required by law (23 U.S.C. § 109). Full access control was, and continues to be, recognized as one of the most significant design features contributing to safety of a freeway system.

Highway officials have recognized that control of access could be materially affected by the extent and manner in which nonhighway facilities, such as utilities, were permitted to occupy Interstate right-of-way. Accordingly, the American Association of State Highway and Transportation Officials (AASHTO) at the beginning of the Interstate program, established a utility accommodation policy. The AASHTO policy allows utilities to cross freeway right-of-way under controlled conditions. The current AASHTO position precludes longitudinal use of the Interstate by utilities except under exceptional conditions.

The approval authority for exceptions has been delegated to the FHWA Regional Offices since the late 1960's. As a consequence, we do not have readily available to us a listing of exceptions which have been granted to allow longitudinal utility use of freeways. We have begun to canvas the field offices and will provide the information to you. It will take time to develop

the list as it is likely the Regions will have to obtain material that has been sent to the record centers. Although we do not have a listing in hand, we believe the number of exceptions granted have been few and far between. The majority of these exceptions have involved relatively short distances (2 miles or less).

The FHWA approved AASHTO's utility accommodation policy for application on Federal-aid projects in 1959. Periodically since then AASHTO has reevaluated its policy. The most recent review was completed in 1982. In each instance AASHTO has reaffirmed the basic principles of the original policy. The FHWA has also in each instance adopted the AASHTO position as FHWA policy.

Implementation of this policy during construction of the Interstate System has required extensive adjustment of utilities to preclude allowing longitudinal installations. There has been a substantial investment of both highway and utility resources in support of this policy. As a consequence, the Nation's network of Interstate highways is currently virtually free of extensive longitudinal utility use.

We recognize that there is continued interest from utilities, private firms, and various governmental entities to have the FHWA reexamine its utility freeway policies in light of continued changes and technological advances within the utility industries, most recently with regard to fiber optics telecommunication. Such a reexamination has merit and on April 1 a notice was published in the Federal Register announcing to the public that a review was being initiated by the FHWA.

In FHWA's review of its policy on whether changes may be made, there are several key issues which deserve attention. Among these are:

- What would be the safety and operational impact of longitudinal use of the Interstate right-of-way? Do different kinds of utilities have different kinds of impacts?
- Should there be conditions placed on the location of facilities and service access to these facilities?
- What is the potential for using Interstate highway rights-of-way for communication systems which would improve defense communications?
- What potential is there for increased economic development caused by these enhanced communications facilities?
- What is the potential for increased revenues that could be generated from leasing the Interstate highway right-of-way to utilities? How should the payments be calculated and who should receive the proceeds?

- Which utilities will be able to use the Interstate rights-of-way? Will companies chosen have to provide service to the state? Will the companies chosen have to provide capacity to competitors?

- Will savings accrue to consumers? Will there be less impact on the environment from using existing rights-of-way?

The state highway agencies through AASHTO have independently initiated their own review of AASHTO's freeway utility accommodation policy. This review was initiated in 1985 by a special AASHTO task force and results are expected later this year. Particular attention is being given to the fiber optics issue. In addition, the Federal National Communication System, with technical support from the FHWA, has undertaken a study to assess the feasibility of developing a more survivable national communication systems. Various alternate locations for such a system, including Interstate highways, are being investigated. It is anticipated that the output from both of these study efforts will also be important considerations in any final policy changes which may be implemented.

The issues involved with allowing more utility use of freeways are varied and complex but offer important opportunities. The potential benefits of safely accommodating new technology are great. I assure you that the FHWA, in undertaking a review of its policy, will complete this task as

expeditiously as possible and will develop a policy for utility use of freeways which properly responds, on a nationwide basis, to the issues at hand.

You also asked for a status report on the study being conducted by the Rand Corporation for the Department of Transportation on the feasibility of using Interstate rights-of-way to accommodate fiber optic cable as an emergency preparedness measure and its expected completion date. The Rand staff have been gathering information on the institutional problems and concerns regarding utility use of highway right-of-way and other right-of-way corridors such as those owned by railroads. They have held discussions with several telecommunication firms. Information on utility accommodation practices for several selected State highway agencies is also being gathered. It is expected that a draft report will be available by late summer and the first phase of the study completed by October 1. If the first phase study indicates that the concept of a nationwide network appears feasible, a second phase study will be undertaken involving a more detailed analysis of this concept and selected routes.

You have asked for a status report on the request made by the State of New York for an exception or waiver to the Federal Highway Administration's existing policy and an estimate of when this review might be completed.

The New York State Thruway Authority, with the support of Governor Cuomo, has requested a general waiver from FHWA's freeway utility accommodation regulation. However, FHWA's regulations do

not contain any provision for a general waiver. The regulations do provide for "specific case" exceptions.

It is noteworthy that those sections of the thruway which have not been constructed or improved with Federal-aid highway funds are not required to follow FHWA regulations, and thus, are not subject to the utilities accommodation policy. Most of the thruway has not had federal funds spent on it. Thus, currently only short portions of the thruway are subject to FHWA requirements. However, if the state wanted to use 4R funds at some time in the future on such a section, they would have to bring the section into conformance with the utility accommodation policy in effect at that time.

The thruway needs FHWA approval to install a 5.99 mile segment of fiber optics in the Albany area. This portion of the thruway has been improved with Federal-aid highway funds and installation of the proposed fiber optic line must be approved under the "special case exception" provisions of FHWA's existing utility accommodation regulation. However, for FHWA to do so, additional information is needed on the proposal. This includes a study of all feasible alternate locations outside freeway right-of-way, cost estimates for these alternates, justification as to why alternate locations are being rejected, and details showing the location of their proposal within freeway right-of-way including access provisions to build and maintain the line. The FHWA field staff met with officials of the thruway and the New York Department of Transportation (NYDOT) on March 31 to discuss the need for additional information. We understand

thruway officials were confident the needed information could be developed quickly and they plan to submit it to our Division Office via the NYDOT. As soon as the submission is received, we will act quickly on it.

I will be happy to respond to any questions.