

EMAIL FROM THE COLORADO ATTORNEY GENERAL'S OFFICE:

Colorado law does not include broadband or internet services in its definition of public utility. Broadband providers are not regulated by the Colorado Public Utilities Commission. Therefore, CDOT's State Highway Utility Accommodation Code does not cover the accommodation of broadband because broadband is not a public or private utility in Colorado. You can find CDOT's Highway Utility Accommodation Code [here](#). If the Colorado Legislature would like CDOT to accommodate broadband as a utility, this is possible, but that requires clear legislative direction and CDOT would then amend its Utility Accommodation Code and accommodate broadband fiber just like, for example, water and power lines.

The FHWA guidance document sets out two methods for addressing broadband projects in the ROW of a Federal-aided highway:

- 1) Accommodation as a utility under 23 CFR Part 645; or
- 2) Approval as an alternative use of the highway right of way ("ROW") under 23 CFR Part 710.

With respect to method #1, the FHWA guidance expressly recognizes that state DOTs will rely on the application of their own state laws and regulations' definition of utilities to determine whether broadband should be accommodated as a utility. Page 2 of the FWHA guidance states:

The Federal definition of a utility facility in 23 CFR 645.207 is broad and intended to cover the extensive array of uses that are defined by the States. State laws/regulations can be narrower in scope than the Federal definition. As such, States may broaden their applicable State laws/regulations to cover the full scope of the Federal definition should they wish these facilities to be accommodated in the highway ROW as a utility. In determining whether a proposed installation is a utility or not, the most important consideration is how the State DOT views it under its own State laws and/or regulations (23 CFR 645.209(m)).

Since broadband does not meet these standards it is challenging to say that it is a utility without additional clarity. Please let us know if you have questions or would like to discuss further.

Thanks.