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September 14, 2020

Nicole R. Nason, Administrator
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

*Re: Broadband Infrastructure Deployment Notice of Proposed Rulemaking
Docket No. FHWA–2019–0037; RIN 2125–AF9*

Consumer Technology Association (“CTA”)¹ applauds the Department of Transportation’s (“DOT’s”) Federal Highway Administration (“FHWA”) for its work to implement Section 607 of the MOBILE NOW Act in its Notice of Proposed Rulemaking (“NPRM”).² The NPRM proposes to further the deployment of broadband infrastructure in the right-of-way (“ROW”) during the completion of Federal-aid or direct Federal highway projects by requiring states to adopt certain measures to facilitate such deployment through greater coordination, a concept CTA has supported for many years.³ The adoption of the NPRM’s proposals will lead to the less-costly deployment of much-needed broadband infrastructure in the ROW and ultimately provide innovators and consumers with access to more robust broadband networks.

Our nation’s current health crisis and continued need for physical distancing highlight every household’s need to access affordable broadband for work, education, entertainment and health care.⁴ COVID-19 has demonstrated how vast swaths of America suffer from inferior

¹ As North America’s largest technology trade association, CTA® is the tech sector. Our members are the world’s largest innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES® – the most influential tech event in the world.

² *Broadband Infrastructure Deployment*, Notice of Proposed Rulemaking, FHWA-2019-0037-0001, RIN 2125-AF92, 85 Fed. Reg. 49,328 (Aug. 13, 2020) (“NPRM”); *see also* Consolidated Appropriations Act, 2018 (Pub. L. 115-141), Division P, Title VII, Section 607, Broadband Infrastructure Deployment (47 U.S.C. 1504) (“MOBILE NOW Act”).

³ *See, e.g.,* Gary Shapiro, *The Comeback: How Innovation Will Restore the American Dream*, 114 (2011).

⁴ *See, e.g.,* Susan Schreiner, *Resiliency in the Age of COVID-19* (July 7, 2020), <https://cta.tech/Resources/i3-Magazine/i3-Issues/2020/May-June/Resiliency-in-the-Age-of-COVID-19>.

broadband. FHWA's proposals have the potential to connect Americans around the country by requiring states to couple broadband infrastructure and everyday roadwork (where projects receive Federal-aid highway funds). This kind of infrastructure deployment would streamline how we connect households with the broadband needed for everyday access. It would also help support the country's transition to next-generation 5G networks. 5G is "a game-changer" – the "platform technology for everything from digital health to augmented and virtual reality ... enabling internet speeds 100 times faster than today's networks."⁵ It will require the deployment of widespread, robust networks nationwide. The NPRM provides an opportunity to deploy broadband infrastructure through a "Dig Once" policy, which can minimize costs, eliminate repeated excavations, preserve land and maximize space in the ROW.

CTA supports these efforts and encourages FHWA to advance its proposals. As FHWA moves forward, the agency should ensure its regulations require states to adopt registration and notification processes that are easy to use, streamlined, efficient and nonduplicative of existing federal or state processes to maximize participation by broadband infrastructure entities.

Greater coordination between broadband infrastructure entities and state departments of transportation will result in significant benefits for consumers.

Consumers benefit not only as network users but also as taxpayers when states facilitate the efficient installation of broadband infrastructure in the ROW. The costs of deploying infrastructure in the ROW can be very high, impeding deployment and slowing access to much-needed capacity. For example, FHWA previously found that nearly ninety percent of the cost of deploying broadband occurs when the work requires significant excavation of the roadway.⁶ Section 607 reflects the need to "ease the installation of broadband infrastructure alongside highway projects" by leveraging Federal-aid highway funds.⁷

By requiring states to meet specific registration, notification and coordination requirements where applicable, FHWA will reduce the cost of deploying broadband and streamline the deployment of infrastructure in the ROW. In turn, this will ultimately provide innovators and consumers with access to more robust broadband networks. In particular, CTA supports FHWA's proposal to require state departments of transportation to coordinate Dig Once

⁵ Jeffrey Hill, CTA's Gary Shapiro: *State, Local Governments Lagging on 5G Adoption*, Via Satellite (Sept. 23, 2019), <https://www.satellitetoday.com/government-military/2019/09/23/ctas-gary-shapiro-state-local-governments-lagging-on-5g-adoption> (quoting Gary Shapiro).

⁶ See, e.g., FHWA Office of Transportation Policy Studies, *Minimizing Excavation Through Coordination*, Policy Brief (Oct. 2013), https://www.fhwa.dot.gov/policy/otps/policy_brief_dig_once.pdf.

⁷ See U.S. Senate Committee on Commerce, Science and Transportation, *President Signs MOBILE NOW Act, Other Key Technology Bills into Law*, Press Release (Mar. 23, 2018), <https://www.commerce.senate.gov/2018/3/president-signs-mobile-now-act-other-key-technology-bills-into-law>.

initiatives with other state and local authorities and develop strategies to minimize repeated excavations.

FHWA should ensure the registration and notification processes adopted by states are easy to use, streamlined and non-duplicative.

Efforts to coordinate with states should not create additional red-tape that risk undermining Congress's goals for speedier, easier infrastructure deployment. Section 607 requires FHWA to implement rules requiring states to (i) establish a process for registering entities wishing to participate in broadband infrastructure ROW facilitation efforts; and (ii) establish a process to notify those entities about the state's Dig Once program.⁸ FHWA proposes to adopt regulations implementing these processes that closely mirror the statutory text without clarifying or providing additional guidance to states in implementing these requirements.⁹

CTA recommends FHWA provide guidance by modifying the proposed regulations to require states to adopt easy to use, streamlined, efficient and non-duplicative registration and notification processes. To do otherwise – to adopt processes that are time-consuming, difficult to use or duplicative – may dissuade broadband infrastructure entities from participating in states' ROW facilitation efforts. To achieve the deployment goals of Section 607, registration processes must be streamlined and efficient. Notification processes must provide timely notifications of planned projects.

The NPRM represents another step towards ensuring public works projects are fully leveraged to taxpayers' benefit. By taking the above steps, FHWA can ensure states more efficiently facilitate the deployment of broadband infrastructure. If you have any questions, please contact Jamie Susskind, Vice President of Policy and Regulatory Affairs, at 703-907-7651 or jsusskind@cta.tech.

Respectfully submitted,

Gary Shapiro

A handwritten signature in black ink that reads "Gary Shapiro". The signature is written in a cursive, flowing style.

President & CEO

⁸ MOBILE NOW Act § 607(b)(1)(B)-(C).

⁹ See NPRM, 85 Fed. Reg. at 49,330 (proposing new 23 C.F.R. §§ 645.307(a)(2) and (3)).