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No.RW/NH-33044/17/2000-S&R

Dated, the 29th September, 2000

To

Secretaries, PWD of all States/UTs; Chief Engineers of all States/UTs, PWD (dealing with National Highways and other Centrally Sponsored Schemes); Director General Border Roads; Chairman, National Highways Authority of India

Subject : Laying of Optical Fibre Cables in National Highway land for establishing telecom infrastructure by private licensees-regarding.

This Ministry in circular No.RW/NH-12037/826/98 - KNT dated 17.08.1999 issued guidelines allowing existing private telecom licensees to lay optical fibre cables for cellular mobile/basic telephone services at par with the DOT. As regards future licensees it was indicated therein that separate guidelines would follow in due course. The model guidelines including the agreement format having operational details that may be uniformly pursued for granting right-of-way permissions to licensed telecom operators and registered infrastructure providers for laying telecom cables/ducts on NH land have since been finalised and enclosed at *Annexure-I*. These guidelines are issued in supersession of the circular dated 17.08.1999.

2. The guidelines provides for the facility of right of way to be extended for laying underground telecom cables, to all licensees (irrespective of existing or future) and registered/licensed infrastructure providers, without discrimination and without payment of any compensatory charges/levy/lease rentals/license fee/free bandwidth/

revenue share/cashless equity etc. subject to the condition that this right of way facility shall be available to the extent of provisions contained in their license agreements. Restoration charges may, however, be levied on/borne by licensees to ensure proper restoration and compaction of the dug portions of the trenches.

3. The guideline make it clear that any authorized licensee of Department of Telecom/Registered Infrastructure Provider is eligible to seek/avail right of way facility/permission. The right of way permission shall be granted by the State Chief Engineer (National Highways) with the concurrence of Regional Officer of the Ministry of Surface Transport in respect of the NHs held by the State PWD. The permission in respect of the NH routes held by the NHAI and BRDB shall be granted by the designated officers of NHAI and BRDB respectively. However, enforceability of the permission so granted shall be restricted to the extent of provisions/scope of service contained/defined in the licence agreement of that licensee & for the purpose for which it is granted (para 1 of guidelines). The cable shall ordinarily be laid at the edge of the Right of Way or at a minimum distance of 15 m from the centre line of the of the nearest carriageway where the road land is wider. In case of restricted width of ROW, which may be adequate only to accommodate the carriageways, central verge, shoulders, slopes of embankment and drains, the cables shall be laid beyond the toe line of the embankments and clear of the drain. In cases where no land strip can be conveniently earmarked for laying of cables, the permission may be refused. The restoration charges are to be borne by the licensee (para 4 of guidelines). As far as possible cutting of the road for crossing is to be avoided and instead may be done by drilling a hole beneath the pavement. If the road needs to be cut, necessary restoration cost shall be deposited with the designated representative of the owner and the same credited to the Central Govt. head of account 'Major Head 1054 - Roads and Bridges - Other Receipts'. In case any damage is caused to the road pavement the same shall be restored to the original condition at the licensees cost (Clause 11 of agreement). The State PWDs/NHAI/BRDB may examine the option of laying ducts/conduits along the alignment of all NHs being constructed/upgraded by them to enable future commercial exploitation of this facility (para 8 of guidelines). The agreement shall be signed by the State Chief Engineers/NHAI/BRDB or his designated representatives on behalf of the owner. For any relaxation on the provisions of the guidelines and/or agreement, prior approval from the Ministry shall be obtained.

4. Before recommending for such permission, the State PWDs are required to keep in view the requirement of 4/6 laning of the NHs especially in case of NHs proposed to be widened under North-South and East-West corridors and Golden quadrilateral linking Delhi-Calcutta-Mumbai and Chennai.

5. The Divisional/Executive Engineer (or equivalent) of the Highway Authority will keep a register of record of right of way permissions to the licensees who have been permitted access to the National Highway under his jurisdiction in the format enclosed (*Annexure-II*) with this circular. A copy of the record should be sent to the Circle Office as well as to the Regional Officer of the Ministry. The record should be periodically checked by inspecting officials.

[Enclosure to Ministry's Circular No. RW/NH-33044/171/2000 S&R dated 29th Sept., 2000]

Annexure-I

MODEL GUIDELINES FOR STREAMLINING THE PROVISION OF RIGHT OF WAY TO TELECOM SERVICE LICENSEES/INFRASTRUCTURE PROVIDERS

Government has realized the need for creating a robust telecommunication infrastructure with adequate bandwidth at affordable rates in order to promote development and proliferation of Information Technology, Electronic Governance, E-Commerce, convergence of Information, Communication and Entertainment sectors so as to improve the state of economy, enhance the quality of life of the citizens and to ensure development of urban and rural areas with equity throughout the country.

Keeping the above objectives in view, the Group of Telecom and Information Technology Convergence, Govt. of India has recommended the following broad guidelines under which Right of Way permissions may be granted to licensed telecom operators and registered infrastructure providers for laying telecom cables/ducts under, over, along, across, in or upon a property vested in or under the control or management of a local, authority or of any other person including public authority, public corporation, autonomous body, State Govt. or Central Govt. in their respective licensed service area during the currency of their licence:

- (1) Any authorized licensee of Deptt. of Telecom/Registered Infrastructure Provider is eligible to seek/avail Right of Way

facility/permission. However, enforceability of the permission so granted shall be restricted to the extent of provisions/scope of service contained/defined in the license agreement of that licensee and for the purpose for which it is granted.

- (2) Either by content or by intent, the purpose of extending Right of Way facility is not to enhance the scope of license of a licensee and such Right of Way permissions are only enabling/facilitating in nature.
- (3) The cable shall ordinarily be laid at the edge of the Right of Way or at a minimum distance of 15 m from the centre line of the nearest carriageway where the road land is wider. In case of restricted width of ROW, which may be adequate only to accommodate the carriageways, central verge, shoulders, slopes of embankment and drains, the cables shall be laid beyond the toe line of the embankments and clear of the drain. In cases where no land strip can be conveniently earmarked for laying of cables, the permission may be refused.
- (4) The facility of right of way for laying underground telecom cables, shall be available to all licensees (irrespective of existing or future) and registered/licensed infrastructure providers, without discrimination and without payment of any compensatory charges/levy/lease rentals/license fee/free bandwidth/revenue share/cashless equity etc. subject to the condition that this right of way facility shall be available to licensees to the extent of provision contained in their license agreements and the reinstatement charges shall be borne by such licensees.
- (5) A performance bank guarantee @ Rs. 25 per route metre with a validity of one year initially (extendable if required till satisfactory completion of work) shall have to be furnished by each licensee as a security against improper filling/unsatisfactory compaction/restoration and damages caused to other underground installations/utility services & interference, interruption, disruption or failure caused thereof to any services. The above charge of Rs. 25/m is liable to be reviewed every 5 years. Notwithstanding this, licensee shall be liable to pay full compensation to the aggrieved owners for any damage sustained by them by reason of the exercise of right of way facility. However, in case of NH land, instead of furnishing the said bank guarantee, the payment of restoration charges would have to be made in advance by the licensee to the owner i.e. MOST or its designated agency before permission is granted. The restoration charges may be credited to the Central Govt. head of account 'Major head 1054 - Roads & Bridge - other receipt'.
- (6) In order to expedite right of way clearances to the licensees in a time-bound manner through an appropriate and effective approval mechanism, a committee under the chairmanship of Chief Secretary to the respective State Govts. may act as single window to coordinate all activities in this regard. Each State Govt. may select a Nodal Point/Secretary of a deptt. to function as Secretary to this Single Window Clearance Committee. However, in case of NH land, licensees would be required to take permission from the Regional Officers of MOST stationed at different States for laying of cables. As regards NH routes executed by the State PWD, the concerned State Chief Engineer (NH) may act as nodal point/single window to coordinate the activities whereas in respect of the NH routes held by NHAI and BRDB, the designated officers of NHAI and BRDB may be assigned this task.
- (7) The Right of Way permissions may be granted by the said nodal office to a licensee within a period of two weeks subject to the licensee's application being complete with route details (including authority/ownership of concerned sections of the route) and compliance to eligibility requirement, payment of reinstatement charges, furnishing of requisite bank guarantee and execution of an agreement having operational details. The above stated Single Window Clearance Committee may be responsible to coordinate in case of any dispute for ownership of property and to expedite grant of Right of Way clearance thereof so as to adhere to the stipulated time-frame.
- (8) In case any shifting or alteration in the position of the laid telephone cables is required due to widening of highways and constructing of flyovers or bridges, the licensee shall do the same at his own cost at a later date within specified period indicated by the respective agency.
- (9) In order to avoid repeated digging on the same routes, if possible, the first incumbent is free to lay voluntarily extra ducts/conduits with extra capacity so as to take care of future needs. The capacity/excess capacity can be commercialized by the incumbent with suitable mutual agreements with the respective State Government/utility agencies. However, the creation of excess capacity by the first incumbent shall not be a precondition for giving Right of Way clearances. The Central/State roadways authorities may consider laying ducts/conduits at the time of construction of roads to facilitate laying telephone cables for which suitable charges could be imposed.
- (10) Licensee shall ensure safety and security of all underground installations/utilities/facilities and shall be solely responsible for compensation/indemnification of concerned authority for damage caused/claims or replacements sought for at the cost and risk of licensee.
- (11) Licensee shall be liable to give a notice of 15 days with route details prior to trenching for fresh or maintenance/repair works. A separate performance bank guarantee for maintenance/repair works shall be furnished by licensee.
- (12) The period of validity of Right of Way permission shall be co-terminus with the validity of licence.

AGREEMENT REGARDING RIGHT OF WAY FOR LAYING TELECOM CABLES/DUCTS

Agreement to lay Telecom Cables/ducts from _____ to _____ km of _____ land.

This Agreement made this _____ day of _____ (month) of _____ (year) between _____ acting in his executive capacity through _____, (hereinafter referred to as Owner which expression shall unless excluded by or repugnant to the context, include his successors in office and assigns) on the one part, and M/s. _____, a Company registered under the Companies Act, 1956, and having its Registered Office at _____ (hereinafter called the Licensee) which expression shall unless excluded by or repugnant to the context, include his successors/administrator assignees on the second part.

Whereas the Owner is responsible, inter-alia, for development and maintenance of roads in _____

Whereas the Licensee proposes to lay Telecom cables/ducts in _____

Whereas the Licensee has applied to the Owner for permission to lay Telecom cables/ducts from km _____ to km _____ of road/route upto _____ and from km to km _____ of road/route upto _____.

And whereas the Owner has agreed to grant such permission on the terms and conditions hereinafter mentioned.

Now this agreement witnesseth that in consideration of the conditions hereinafter contained and on the part of the Licensee to be observed and performed, the Owner hereby grants to the Licensee permission to lay Telecom Cables/ducts as per the approved drawing attached hereto subject to the following conditions, namely.

- (1) The cable shall ordinarily be laid at the edge of the Right of Way or at a minimum distance of 15 m from the centre line of the nearest carriageway where the road land is wider. In case of restricted width of ROW, which may be adequate only to accommodate the carriageways, central verge, shoulders, slopes of embankment and drains, the cables shall be laid beyond the toe line of the embankments and clear of the drain. In cases where no land strip can be conveniently earmarked for laying of cables, the permission may be refused;
- (2) The top of the casing/conduit pipe containing the cables shall be at least 1.2 m below the surface of the road subject to being at least 0.3 m below the drain inverts;
- (3) The Licensee shall ensure making good the excavated trench for laying cables by proper filling and compaction, so as to restore the land in to the same condition as it was before digging the trench, clearing debris/loose earth produced due to execution of trenching atleast 50 m away from the edge of the right of way;
- (4) The licensee shall furnish a Bank Guarantee for an amount calculated @ Rs. 25 (Rupees Twenty five only) per route metre to the Owner, for a period of one year initially (extendable if required till satisfactory completion of work) as a security for ensuring/making good the excavated trench for laying the cables/ducts by proper filling and compaction, clearing debris/loose earth produced due to execution of trenching atleast 50 m away from the edge of the right of way. The above charge of Rs.25/m is liable to be reviewed every 5 years. No payment shall be payable by the Owner to the licensee for clearing debris/loose earth. In case the work contemplated herein is not completed to the satisfaction of the Owner, which has granted the permission, within a period of 11 months from the date of issue of the Bank Guarantee, the Licensee shall either furnish a fresh guarantee or extend the guarantee for a further period of one year. In case of the Licensee failing to discharge the obligation of making good of the excavated trench, the Owner shall have a right to make good the damages caused by excavation, at the cost of the Licensee and recover the amount by forfeiture of Bank Guarantee. However, in case of NH land, instead of furnishing the said bank guarantee, the payment of restoration charges would have to be made in advance by the licensee to the Owner i.e. MOST or its designated agency before permission is granted;
- (5) The Licensee shall make his own arrangement for crossing of cross-drainage structure, rivers, etc., below the bed. In case, this is not feasible, the cables/ducts may be carried outside the railings/parapets and supported on brackets fixed to the outside of the bridge superstructure. The fixing and supporting arrangement with all details shall be got approved in advance from the concerned Owner which has granted such permission. Additional cost on account of fixing and supporting arrangement as assessed by the Owner shall be payable by the Licensee.
- (6) The Licensee shall shift the cables/ducts within 90 days (or as specified by the respective agency/Owner) from the date of issue of the notice by the concerned Owner to shift/relocate the cables/ducts, in case it is so required for the purpose

of improvement/widening of the road/route/highway or construction of flyover/bridge and restore the road/land to its original condition at his own cost and risk.

- (7) The Licensee shall be responsible to ascertain from the respective agency in coordination with Owner, regarding the location of other cables, underground installations/utilities/facilities etc. The Licensee shall ensure the safety and security of already existing cables/underground installations/utilities/facilities etc. before commencement of the excavation.
- (8) The Licensee shall be solely responsible/liable for full compensation/indemnification of concerned agency/aggrieved owners for any direct, indirect or consequential damage caused to them/claims or replacements sought for, at the cost and risk of the Licensee. The concerned agency in co-ordination with Owner shall also have a right to make good such damages/recover the claims by forfeiture of the Bank Guarantee.
- (9) If the Licensee fails to comply with the condition [6] and [7] above to the satisfaction of the Owner, the same shall be got executed by the Owner at the cost and risk of the Licensee.
- (10) The Licensee shall procure insurance from reputed insurance company against damages to already existing cables/underground installations/utilities/facilities etc. during trenching.
- (11) As far as possible, the Licensee should avoid cutting of the road for crossing Highways, and other Roads and try to carry out the work by drilling a hole beneath the road pavement. In case any damage is caused to the road pavement in this process, the Licensee will be required to restore the road to the original condition at his cost. If due to unavoidable reasons the road needs to be cut for crossing or laying a cable, the Licensee shall deposit the restoration cost/reinstatement charges as assessed by the Owner in co-ordination with the concerned agency.
- (12) The Licensee shall inform/give a notice to the concerned agency designated by Owner at least 15 days in advance with route details prior to digging trenches, for fresh or maintenance/repair works. A separate performance bank guarantee for maintenance/repair works shall have to be furnished by the Licensee.
- (13) Each day, the extent of digging the trenches should be strictly regulated so that cables are laid and trenches filled-up before the close of the work that day. Filling should be completed to the satisfaction of the concerned agency designated by the Owner.
- (14) The Licensee shall indemnify the concerned agency in co-ordination with Owner, against all damages and claims, if any, due to the digging of trenches for laying cables/ducts.
- (15) This permission shall be co-terminus with the validity of licence awarded by the Department of Telecommunications. The permission granted under this Agreement will automatically cease in case of premature termination of the licence granted to by the Department of Telecommunications. The Owner also has right to terminate the permission or to extend the period or Agreement. In case the Licensee wants shifting, repairs or alteration to telecom cable/ducts, he will have to furnish a separate Bank Guarantee.
- (16) That the Licensee shall not without prior permission in writing of the concerned agency in co-ordination with Owner undertake any work of shifting, repairs or alterations to the said Telecom Cables/ducts.
- (17) In order to avoid repeated digging, on the same routes, if possible, the Licensee is free to lay voluntarily extra ducts/conduits with extra capacity so as to take care of future needs. The capacity/excess capacity can be commercialized by the Licensee with suitable mutual agreements with the Owner or his designated agency. However, the creation of excess capacity by the Licensee is not a precondition for Right of Way permission granted herein.
- (18) The permission granted shall not in any way be deemed to convey to the Licensee any ownership right or any interest in route/road/highway land/property, other than what is herein expressly granted.
- (19) During the subsistence of this Agreement, the telecom cables/ducts located in Highway land/property shall be deemed to have been constructed and continued only by the consent and permission of the Owner so that the right of the Licensee to the use thereof shall not become absolute and indefeasible by lapses of time.
- (20) The Licensee shall bear the stamp duty charged on this agreement.
- (21) The Telecom Cables shall not be brought into use by the Licensee unless a completion certificate to the effect that the Telecom cables/ducts has been laid in accordance with the approved specifications and drawings and the trenches have been filled-up to the satisfaction of the concerned agency in co-ordination with the Owner, has been obtained.
- (22) Notwithstanding anything contained herein this Agreement may be cancelled at any time by the Owner for breach of any condition of the same and the Licensee shall neither be entitled to any compensation for any loss caused to it by such cancellation nor shall it be absolved from any liability already incurred.
- (23) The Licensee shall have to provide barricading, danger lighting and other necessary caution boards while executing the work.
- (24) If any traffic diversion works are found necessary during the working period such diversion shall be provided at the cost of Licensee.

- (25) After the termination/expiry of the agreement, the Licensee shall remove the cables/ducts within 90 days and the site shall be brought back to the original condition failing which the Licensee will lose the right to remove the cables/ducts. However, before taking up the work of removal of cables the Licensee shall furnish a Bank Guarantee to the Owner for a period of one year for an amount assessed by the Owner for making good the excavated trench by proper filling and compaction, clearing debris, loose earth produced due to excavation of trenching at least 50 m away from the edge of the right-of-way.
- (26) The enforceability of the Right-of-Way permission granted herein shall be restricted to the extent of provisions/scope of service contained/defined in the licence agreement of the Licensee with Department of Telecommunications and for the purpose for which it is granted. Either by content or by intent, the purpose of extending this Right-of-Way facility is not to enhance the scope of Licence of the Licensee with the Department of Telecommunications.
- (27) Any disputes in interpretation of the terms and conditions of this Agreement or their implementation shall be referred to the High Level Committee comprising the designated representatives of the Owner, Licensee and the concerned agencies and the decision of the committee shall be final and binding on all.

This Agreements has been made in duplicate, each on a Stamp Paper. Each party to this Agreement has retained one stamped copy each.

IN WINTNESS WHEREOF THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED THROUGH THEIR RESPECTIVE AUTHORISED REPRESENTATIVES THE DAY AND THE YEAR FIRST ABOVE WRITTEN.

SIGNED SEALED AND DELIVERED FOR AND ON BEHALF OF OWNER.

BY SHRI _____

(signature, name & address with stamp)

SIGNED ON BEHALF OF M/S _____ (Licensee)

BY SHRI _____

(signature, name & address with stamp)

HOLDER OF GENERAL POWER OF ATTORNEY DATED _____ EXECUTED IN ACCORDANCE
WITH THE RESOLUTION NO. _____ DATED _____ PASSED BY THE BOARD OF
DIRECTORS IN THE MEETING HELD ON _____

IN THE PRESENCE OF (WITNESSES):

1

2.

Format for Maintaining Records of Right-of-Way permission granted for laying OFC

(to be maintained separately for every NH and State, every PWD Division or equivalent)

1. Name of State : _____
2. Name of Agency (PWD/BRO/NHAD) : _____
3. Name of PWD Division of Equivalent : _____
4. NH Number : _____

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