

October 3, 2019

To: ALL Executive Branch Agencies Engaged in Resource Sharing  
From: Secretary of Department of Information Technology  
Subject: Nonprofit Proposals to Install Broadband Communications in State Rights-of-Way  
Short Title: RSA-PGM-2019-02

1. Purpose. To provide programmatic guidance on how to process proposals from nonprofit telecommunications providers seeking to install broadband communications infrastructure in rural and underserved areas of the State.
2. Background. Section § 8-654 of the Transportation Article (“TA”) of the Maryland Code requires MDOT, MTA, MdTA, SHA, BPW, DoIT, DNR, and MDE to allow the use of any right-of-way or easement, for the installation of broadband communications infrastructure by a nonprofit telecommunications services provider in rural and underserved areas of the State without the imposition of any charge for the use of the right-of-way or the easement.
3. Policy. DoIT has determined that installations falling within the ambit of TA § 8-654 are exempt from the provisions of the Resource Sharing Law (“RSL”), Annotated Code of Maryland, State Finance & Procurement Article (“SF&P”) § 3A-307(c), provided that DoIT can confirm that the nonprofit telecommunications services provider’s proposed installation is in an area considered rural and underserved as defined below.
4. Definitions. For the purpose of maintaining uniformity throughout the State RSA Program, DoIT has adopted the following definitions.
  - a. “Rural Area” means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: 1. A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or 2. an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.
  - b. “Underserved Area” means an area in which no part of the area has two or more facilities-based broadband service providers offering minimum connectivity speeds of 25 Mbps download and 3 Mbps upload.
5. Procedure. DoIT and each agency will use the above definitions when determining whether a proposal submitted by a nonprofit telecommunications services provider for the purpose of installing broadband communications infrastructure is subject to TA § 8-654 or should be processed as a resource sharing agreement.
  - a. When a State Agency receives a proposal for installation of broadband communication infrastructure in a rural and underserved area from a nonprofit telecommunications services provider, pursuant to TA § 8-654 the State Agency should:



DEPARTMENT OF  
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i. Assess whether the proposal meets the requirements of TA § 8-654, including requesting supporting documentation such as the nonprofit's certificate of good standing from the State of Maryland or an IRS 501(c)(3) Affirmation Letter issued within thirty calendar days of the execution date of its Non-profit Telecommunications Services Provider Certification. Copies of the proposal and all supporting documentation must also be provided to DoIT.

ii. The requesting nonprofit telecommunications services provider shall execute the Certification discussed in (i) above, which will include provisions for the following:

A. If the nonprofit telecommunications services provider sells, assigns or otherwise transfers facilities installed under TA § 8-654, it must notify the Agency of the change, which may require prospective application of the Resource Sharing Law.

B. If the nonprofit telecommunications services provider changes its status to a for-profit company, it must notify the Agency of the change, which may require prospective application of the Resource Sharing Law.

iii. The Agency must maintain an electronic record and hard copy file folder of each approved nonprofit broadband telecommunications installation within the ambit of TA § 8-654.

iv. The Agency must provide DoIT a copy of all proposals approved within the ambit of TA § 8-654 for its records.

b. If the conditions for treatment under TA § 8-654 are not satisfied, i.e., the provider is not a nonprofit telecommunications services provider, or the proposed installation area is outside of a rural and underserved area, the proposal is considered resource sharing and should be processed in accordance with the established RSA business process.

6. Conclusion. Agencies should continue to advise DoIT of all information technology proposals. DoIT can assist other agencies in making the final determination as to whether a proposal under TA § 8-654 is exempt from the RSL.

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

Approved:

Michael G. Leahy  
Secretary

Department of Information Technology