BROADBAND OFFICE

1401 Main Street
Suite 900
Columbia, SC 29201
(803) 737-0800
ors.sc.gov/broadband

Private Easement Access Policy Notice

Background

As ARPA funded projects continue to expand Broadband infrastructure into rural areas throughout the State, more frequently there are instances arising where easement access on privately-owned land is required to connect all homes, businesses, and community anchor institutions in funded areas. It is the responsibility of each Grantee to ensure a project's viability prior to a grant award, including matters pertaining to easement access on both public and private lands. If an agreement cannot be reached, the resulting lack of easement access impacts engineering design and jeopardizes the overall project build by limiting available access to broadband service for consumers downstream.

Objective

The objective of this policy notice is to outline a process that establishes a reasonable and good faith effort to identify and contact property owners that fall into an area of effect due to private land easement access constraints. Included are steps each Grantee must follow working in conjunction with the South Carolina Broadband Office (SCBBO), when easement access issues arise.

Grantee Requirements *(Sourced from ARPA Grant Agreement)*

The responsibilities of [the] Grantee shall include, but are not limited to, the following:

> *Grantee has satisfied itself as to the nature and location of the Project, the general and local conditions to be encountered in the performance of the Project, and all other matters that can in any way affect the work or the cost thereof.*
>
> *[Obtained] all certifications, licenses, permits, and approval necessary to operate the project, and otherwise [satisfied] all requirements necessary to operate the project.*

ORS, in its sole discretion, may authorize the disbursement of funds on a percent completion basis which may be calculated as: Total Number of Structures Available to be Served divided by Total Number of Structures to be Completed (as indicated in Exhibit A), proportional to the total amount of eligible expenses incurred by the Grantee toward completion of the project.

Throughout the duration of the Project, ORS, in its sole and absolute discretion, has the right to review the status of the Project. Grantee acknowledges and agrees that ORS has final discretion as to the determination of the Project completion and its compliance with this Agreement, and that ORS also has the sole right and option, to disburse a portion of the Grant amount, which portion shall be determined by ORS if the Project fails to fully satisfy the terms of this Agreement. For example, if the approved project identified 2,000 households/businesses could be served but if ORS, in its sole discretion, determines that only 50% of the Project is completed (i.e., only 1,000 households/businesses have broadband service available), ORS, in its sole discretion, may, but shall not be required to, limit the disbursement to the lesser of (a) 50% of the Grant

amount, or (b) 50% of eligible expenses, subject to the agreed upon Project match. Notwithstanding this Section, however, ORS retains the right, and Grantee hereby agrees, that ORS may deny and withhold any disbursement of Grant funds in the event the Project is not fully completed by the Completion Date.

Reporting Options

Attempts should be made at initiation of the project planning AND at later stages in the process, including construction, to avoid encountering problems of inaccessibility or refusal to grant easement access for facilities in the middle of a project build. In the event it is determined private easement access is of issue for a given project, Grantees should notify the SCBBO during the next regularly scheduled monthly status meeting and ensure the issue is documented as part of the project log file so that the situation can be flagged and tracked over time.. Grantees should afford the public and private stakeholders adequate information about the undertaking and its aspects (affected properties, nature of effects, and proposed resolution of any adverse effects) ahead of time in a clear, transparent manner.

All attempts made to secure easement access must be supported with evidentiary proof. Anecdotal discussions with property owners are not deemed a sufficient means of coordinating challenges and/or associated attempts made toward obtaining easements on private lands. Grantees must document their attempts to contact the property owner, which may include, but are not limited to, certified mail, public announcements, or news media outlets (e.g., paper, radio, local tv broadcast, social media, public meetings, etc.), should be undertaken in an effort to provide access to all structures in the funded project area. At a minimum, public notices should be designed to effectively inform the public about the nature of the undertaking, its effects, and the public's likely interest in it. Grantees are encouraged to include in their correspondence that "no response" is a 'refusal' along with a deadline for accepting offer for access.

If, upon completion of the Grantee's due diligence, efforts to secure an easement still results in refusal to grant access by a landowner, and no alternative design exists that would be suitable for providing access to remaining structures in the funded area, Grantees must do the following:

1. Coordinate with the SCBBO on their findings indicating the number of BSLs that are affected. The FCC ID for all affected BSLs must be uploaded in either .CSV or .XLSX file format to the appropriate project folder in Citrix
2. Provide evidence of their efforts using the examples provided in this policy notice.
3. Fill out and sign the attached easement affidavit.
4. Build up to the property line so in the event access is granted in the future, drops to the affected properties may still occur after the completion of the project.