



**GUIDELINES FOR GRANT
OF ACCESS ON
FEDERAL HIGHWAYS RIGHT-OF-WAY
TO INFORMATION AND
COMMUNICATIONS TECHNOLOGY SERVICE
PROVIDERS(ICTSPs).**

May 2012

GUIDELINES FOR GRANT OF ACCESS ON FEDERAL HIGHWAYS RIGHT-OF-WAY TO INFORMATION AND COMMUNICATIONS TECHNOLOGY SERVICE PROVIDERS(ICTSPs).

These guidelines are made under the hand of the Minister of Works (hereinafter referred to as the Minister) with due consultation with the Minister of Communication Technology (HMCT) for the purpose of regulating, guiding and governing the grant and use of Rights of Way to Information and Communications Technology Service Providers (ICTSPs) for laying communications cables pursuant to the powers vested in the Minister by extant laws and regulations of the Federal Republic of Nigeria.

PREAMBLE: LEGAL AND POLICY CONSIDERATIONS

These guidelines are governed by the laws of the Federal Republic of Nigeria particularly the following:

1. The Federal Highway Act (CAP 135 Laws of the Federation)
2. The Nigerian Communications Act (2003)

It is hereby noted:

- a) That Right of Way on a Federal Highway is a public resource controlled by the Federal Government through the Federal Ministry of Works and as a result, Right of Way is granted to the grantee for public benefit and may not be used contrary to public policy or for any purpose that shall be harmful to the good of the general public.
- b) That the principle of infrastructure sharing is mandated in the grant of these Rights of Way to reduce incidents of multiple excavations on the Federal Highways, which increase the likelihood of damage to other highway infrastructure.

- c) That grantees shall therefore operate the Rights of Way on an open access basis and for the sole purpose of laying and operating communications cables for ICT transmission services.
- d) That the contravention of any Federal Law, Policy or these guidelines in the use of these Rights of Way are expressly prohibited and may lead to a fine, suspension or revocation of the right of way.
- e) That in the use of Right of Way to lay communications cables, all efforts shall be made by a grantee to ensure that there is minimal damage to other existing highway infrastructure and other infrastructure of other holders of rights of way.
- f) That the grantee shall be liable for any damage caused by it or its agents or independent contractors engaged by them without prejudice to the right of the Ministry and other holders of Rights of Way to hold such agents and independent contractors jointly liable. The grantee shall immediately ensure that any damage is immediately and satisfactorily remedied.
- g) The right of way on a Federal Highway is hereby defined to include all infrastructure deployed prior or pursuant to the use of the Right of Way and may not be alienated without the prior written consent of the Minister first had, which consent shall not be given to a person who already holds a similar Right of Way along a given route, except he first surrender the initial Right of Way granted to him on that route.
- h) In case of the sale of a corporate body that holds a Right of Way, the Right of Way shall be sold separately from the corporate body.

APPLICATION AND GRANT OF RIGHTS OF WAY

1. Application shall be made to the Minister of Works by the interested ICTSP for granting of access to lay its ducts/cables along the Federal Highways RoW, clearly stating:-
 - a. The route required, in line with the Ministry's Road Inventory.
 - b. Proper starting and end points of the laying operation.
 - c. The exact length applied for in metres.
 - d. Side of the road (RHS or LHS) on which laying is intended.
 - e. Cross sectional dimension of intended trench excavation.
 - f. Number of ducts to be laid.
 - g. Type and capacity of ducts and cables to be laid.
 - h. Excavation and backfill methods.
2. Application shall be examined by the Highways Planning Division to determine the suitability of the applications and the chargeable RoW access fee and make recommendations to the Minister of Works.
3. The chargeable RoW access fee for laying of ICTSP ducts and cables shall be N145.0/linear metre, and N20.0/linear metre as annual maintenance access fee, subject to periodic reviews at five(5) year intervals and/or whenever compelling circumstances dictate same.
4. The Minister shall consider the recommendations of the Highways Planning Division and shall make a decision as to approval or refusal of the Right of Way. In considering the recommendations, the Minister may

grant hearing to the applicant in order to make an informed decision. The Ministry shall ensure that all applications are treated and concluded within a period not longer than 30 Calendar days.

5. Where the Minister gives approval for the grant of the right of way, a demand notice for payment of the requisite access fee shall be sent to the ICTSP. The approval should also state that the relevant FCW shall monitor the use of the RoW granted and shall report any infraction by the user.

6. On showing evidence of payment of the requisite access fee, approval of RoW access shall be conveyed to the ICTSP, attaching the schematic diagram for laying of ICTSP ducts and cables along Federal Highways RoW.

7. The schematic Diagrams shall consist of Diagrams 1-7 at pages 4-6 and shall have the following features:

- a. Every cable being laid shall be passed through a duct.
- b. How ducts and cables are placed on flat terrains, cuts, fills, rocks and bridge decks.
- c. Required minimum trenching distance from the outer edges of drains.
- d. Required minimum trenching distance from the toe of embankments.
- e. Required positioning of ducts on bridge deck sidewalks.
- f. Required depth of thrust boring across highways where trenching is not feasible.

SCHEMATIC DIAGRAM.

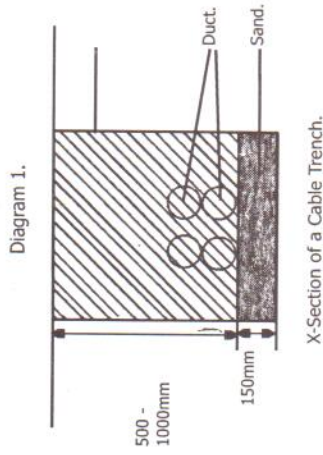


Diagram 2.



Diagram 3.

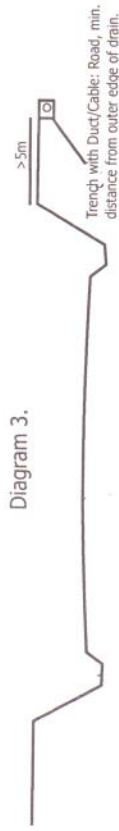


Diagram 6.

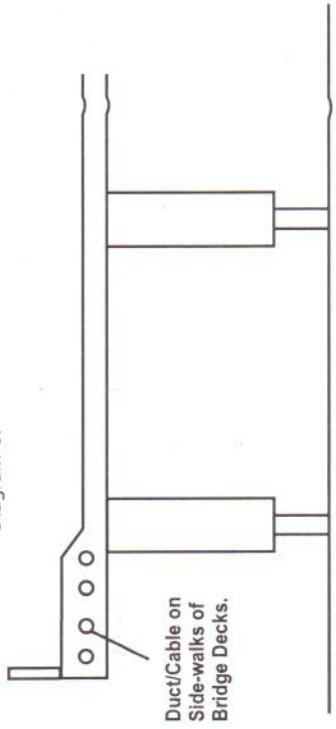
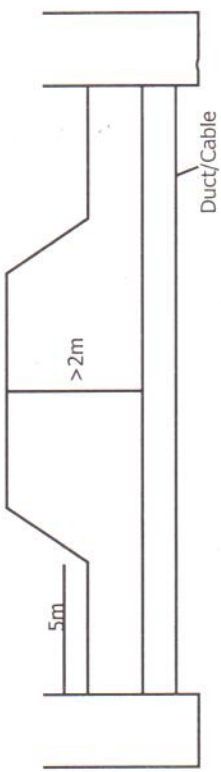


Diagram 7.



X-Section of a Thrust Boring where trenching is not feasible

Diagram 4.

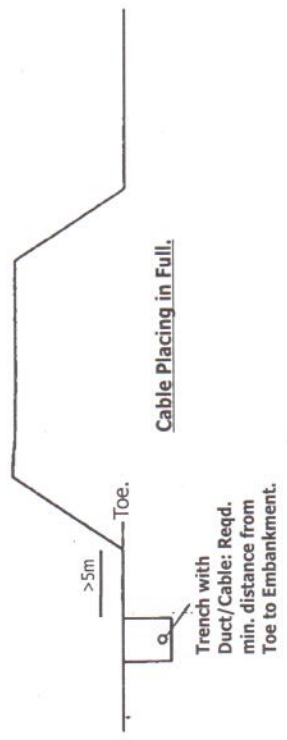
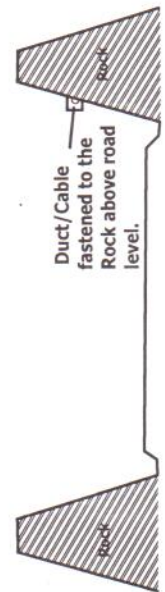


Diagram 5.



1. The letter of approval shall be copied to the relevant Federal Controller(s) of Works directing him (them) to ensure that the laying of ducts and cables conforms to approved and published guidelines and specifications.
2. The payment of annual maintenance access fee of N20.0/ln.m shall commence one year after the laying of the ducts and cables. The penalty for default after a grace period of 3months shall be N50.0/ln.m of the length laid.
3. Any ICTSP granted RoW access approval to lay ducts and cables along Federal Highways RoW should lay a minimum of 4 ducts for redundancies to accommodate other ICTSP. (This is to avoid multiple excavations and trenching of roads leading to compromise in the integrity of the roads and damage to already laid cables.)

PROCESSES AND PROCEDURES FOR LAYING OF CABLES

1. No Grantee shall commence any work on a Right of Way before the Right of Way grant is duly communicated to it.
2. No Grantee shall commence laying of cable works in any state of the Federation without first registering such intention, as well as, details of routes, works and timelines for such works with the Federal Controller of Works in the State. The Controller shall not delay in granting or refusing approval for commencement of works beyond a period of seven days and have the responsibility for compliance monitoring of the works. In case of a refusal he shall inform the grantee of the reasons for refusal.

3. The Grantee shall furnish the Federal Ministry of Works with a copy of the "As-Laid-Drawing for each approval to guide the Ministry in future rehabilitation, expansion and maintenance work on the road.
4. The As-Laid drawings shall show the following:-
 - a. Depth of the trenching.
 - b. Number of ducts laid.
 - c. Type and capacity of ducts.
 - d. Types of cables.
 - e. Depth of Markers.
 - f. Position of the ducts and cables relative to the road centre line.
5. On completion of laying of the ducts and cables, the ICTSP shall obtain a completion certificate from the Federal Controller of Works that monitored/supervised the operation and forward copies to Federal Ministry of Works, Headquarters for issuance of a single completion certificate for each approval.
6. Relocation of ducts and cables during rehabilitation/construction of roads, if cables are found to obstruct road works, shall be carried out by the Grantee at their own expense.
7. Any contentious issue encountered in the course of the laying of ducts and cables shall be reported to the Ministry and the Ministry may consider such issues in collaboration with the Ministry of Communication Technology.

TECHNICAL QUALIFICATIONS FOR WORKS

Where a grantee proposes to use an independent contractor to carry out any installation and other works on the Right of Way he shall inform the Federal Ministry of the Works of the name and profile of the contractor, who shall be registered for such works with the Ministry.

No person shall carry out any works on installation and other connected works on the Rights of Way without being properly registered with the Federal Ministry of Works.

The Department of Highways Planning and Development shall carry out the registration of Contractors qualified to carry out telecommunications ducts and fibre installations and such contractor in addition must be qualified to carry out highway reinstatement works whenever necessary.

The grantee or his contractor shall ensure that each location of works pursuant to these Rights of Way is supervised at all times by a qualified civil engineer with a minimum of HND and 2 years working experience. Any breach of this provision shall lead to a suspension of works and a fine of up to seven hundred and fifty thousand Naira Only (=N=750,000.00).

ALIENATION OF RIGHTS OF WAY

1. A Right of Way may be alienated in part or in full with the consent of the Minister, but may not be alienated as part of the sale of a company.
2. A consent fee of 5% of the transaction value shall be payable to the Ministry on approval of the alienation of a Right of Way.

3. A right of way shall not be traded purely for speculative purposes; therefore no grantee shall alienate a right of way to a person who currently holds a right of way on the same route.
4. Complete or partial Alienation of a right of way include sale, lease and mortgage of ducts (or duct space) or right to lay ducts along a route where ducts have not been laid by the original grantee.
5. A right of way shall not be used as a security for loans, debenture or any other lien without the consent of the Minister.
6. A grantee/lessor and subgrantees/lessees of a right of way shall also equally share the cost of maintenance and annual renewal fees.

SANCTIONS

The breach of these guidelines or any relevant laws or regulations of the Federal Government of Nigeria in the course of operations under these Rights of Way shall be punishable by any of the following:

1. Fines of up to N1,000,000.00 per day
2. Suspension of Right of Way
3. Termination of Right of Way

These guidelines come into effect immediately and apply as a policy instrument to all existing and future Rights of Way on Federal Highways, pursuant to the National Policy on the Laying of Fiber Optic Cables on Federal Highways RoW and extant laws and regulations.

(Signed)

Honourable Minister
Federal Ministry of Works
May, 2012