



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

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Refer to: MC-PSD

SEP 23 2016

Dear Ms. Sandberg:

Thank you for your letter of August 23 on behalf of the National Association of Tower Erectors (NATE), requesting guidance on broadband/wireless services as a utility in terms of the hours-of-service exception for utility service vehicles (USV) in 49 CFR 395.1. You requested a response confirming your understanding of the definition of a USV in § 395.2 to include those commercial motor vehicles engaged in repairing, maintaining, and operating structures or other physical facilities for broadband internet.

The definition of a USV in § 395.2 reads in part:

“Utility service vehicle means any commercial motor vehicle:

(1) Used in the furtherance of **repairing, maintaining, or operating** any structures or any other physical facilities necessary for the **delivery of public utility services**, including the furnishing of electric, gas, water, sanitary sewer, **telephone, and television cable or community antenna service**;

(2) While engaged in any activity necessarily **related to the ultimate delivery of such public utility services to consumers**, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider);...” [Emphasis added]

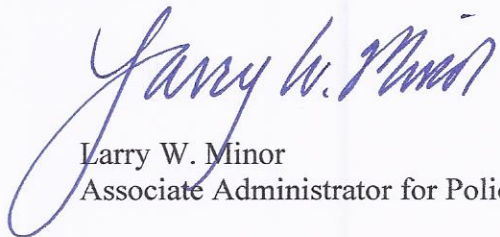
We consider broadband internet and wireless services to be public utilities as they are provided ultimately to consumers and are comparable to the “telephone, and television cable or community antenna service” stated in the regulation above. They are transmitted to consumers over the same types of cables as television and telephone services. At the time the § 395.2 definition was written, broadband internet services were not in common use.

There has been some legal debate about the “public utility” status of internet providers. Recently, in United States Telecom Ass’n v. FCC, No. 15-1063 (D.C. Cir. June 14, 2016), the Court denied petitions for review of an order of the Federal Communications Commission¹ (FCC) that reclassified broadband internet service as a “telecommunications service” under section 706 of the Telecommunications Act of 1996. Although not addressing the public utility issue, the FCC order placed broadband internet services in the same category as television and telephone services.

¹ “2015 Open Internet Order,” 30 FCC Red. At 5624.

Should you have any questions, please contact Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, at (614) 942-6477, or by email at tom.yager@dot.gov.

Sincerely,



Larry W. Minor
Associate Administrator for Policy