



# TEMPORARY RULE-MAKING

## FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Department of Administration

2. Rule citation & name: 01 NCAC 06F .0101 Procedures

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 5, 2018
- b. Proposed Temporary Rule published on the OAH website: November 9, 2018
- c. Public Hearing date: November 26, 2018
- d. Comment Period: November 9, 2018 – December 5, 2018
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 6, 2018
- f. Adoption by agency on: December 27, 2018
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite: S.L. 2018-5, Section 37.1(a) – (i)  
Effective date: July 1, 2018
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☐ A recent federal regulation.  
Cite:  
Effective date:
- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: S.L. 2018-5, Section 37.1(i) states "...[T]he Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019."

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Directed by S.L. 2018-5, Section 37.1(i) states "...[T]he Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019."

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: John F. Maddrey, General Counsel

Phone: 919-807-2425

E-Mail: [john.maddrey@doa.nc.gov](mailto:john.maddrey@doa.nc.gov)

Agency contact, if any: Shanon Gerger, Paralegal

Phone: 919-807-4425

E-Mail: [shanon.gerger@doa.nc.gov](mailto:shanon.gerger@doa.nc.gov)

10. Signature of Agency Head\*:

*Machelle Sanders*

\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Machelle Sanders

Title: Secretary

E-Mail: [Machelle.Sanders@doa.nc.gov](mailto:Machelle.Sanders@doa.nc.gov)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 06F .0101

**DEADLINE FOR RECEIPT: Thursday, January 10, 2019**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Overall, when does this Rule apply? Based upon the cited Session Law, I assume that this is applicable with regard to the GREAT program, but that is not clear.*

*Please note that we read rules without the titles as they can be changed without going through the rule-making process. Please make it clear within the text of the body of the Rule when this Rule would be applicable.*

*Please change "will" in (a), (b), (c), and (d), to "shall"*

*In Paragraph (a), who is "an agency"? Also, who would an applicant be?*

*Are the contents of a PO-2, BB-2, and a WISP application set forth elsewhere in rule or statute? If not, please provide the substantive requirements of the forms in rule. IS WISP application the same applications set forth in 143B-1373(d)?*

*In Paragraph (a), what is meant by "SPO will evaluate"? For what? How?*

*In Paragraph (a), what is meant by "all relevant costs"? Is this set forth in statute?*

*In (b), what is meant by "SPO will generate the necessary lease, license, or easement needed"?*

*Also, both "necessary" and "needed" are not necessary. Please choose one.*

*In Paragraph (c), what is meant by "the applicant and SPO will execute duplicate original agreements"? What is actually happening here and what is required of the applicant?*

*In Paragraph (d), please delete or define "properly."*

*In Paragraph (d), what are meant by "guidelines"? Do you mean Rules?*

*Also, what are "other State agencies involved"?*

Amber May  
Commission Counsel

Date submitted to agency: Friday, January 4, 2018

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

01 NCAC 06F .0101 is adopted under temporary procedures as follows:

## **SUBCHAPTER 6F – TELECOMMUNICATIONS FACILITIES FOR BROADBAND PROVIDERS**

### **01 NCAC 06F .0101 PROCEDURES**

(a) Upon referral from the NC Department of Information Technology (DIT), an Agency will submit to the State Property Office (SPO) a completed PO-2, Disposition of Real Property form, and an applicant's BB-2, WISP Application form, together with a list and description of the equipment to be used. SPO will evaluate the proposal and notify the Agency of relevant costs.

(b) SPO will generate the necessary lease, license, or easement needed for approval and provide to the Agency for review and distribution to the applicant.

(c) The Applicant and SPO will execute duplicate original agreements.

(d) The Agency will be responsible for ensuring all equipment is installed properly and in accordance with the guidelines set out by DIT, SPO and other state agencies involved.

History Note: Authority G.S.146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

Temporary Rule Eff. January 28, 2019.



**TEMPORARY RULE-MAKING**  
**FINDINGS OF NEED**  
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Department of Administration

2. Rule citation & name: 01 NCAC 06F .0102 Terms and Conditions

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 5, 2018
- b. Proposed Temporary Rule published on the OAH website: November 9, 2018
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- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite: S.L. 2018-5, Section 37.1(a) – (i)  
Effective date: July 1, 2018
- ☐ A recent change in federal or state budgetary policy.  
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- ☐ A recent federal regulation.  
Cite:  
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- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: S.L. 2018-5, Section 37.1(i) states "...[T]he Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019."

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Directed by S.L. 2018-5, Section 37.1(i) states "...[T]he Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019."

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: John F. Maddrey, General Counsel

Phone: 919-807-2425

E-Mail: [john.maddrey@doa.nc.gov](mailto:john.maddrey@doa.nc.gov)

Agency contact, if any: Shanon Gerger, Paralegal

Phone: 919-807-4425

E-Mail: [shanon.gerger@doa.nc.gov](mailto:shanon.gerger@doa.nc.gov)

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Machele Sanders

Title: Secretary

E-Mail: [Machele.Sanders@doa.nc.gov](mailto:Machele.Sanders@doa.nc.gov)

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 06F .0102

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*On line 4, when would this Rule apply? Is it to all broadband providers, or just to those participating in the GREAT program?*

*Please change all wills throughout this Rule to shalls*

*Since the terms of the lease will be a contract between the two parties, is it necessary to have specific provisions (such as Items (2), (3), (4), and (5)) in Rule?*

*Given .0101(b), is Item (1) necessary?*

*What is your authority for Item (2)? 160A-272 appears to grant the council authority to determine lease terms. Perhaps the intent is to address different issues, but that's not clear in your Rule.*

*In Item (3), is the intent here that it be included in the lease, or are you trying to require that there actually be a utility easement in place that allowed for a non-exclusive right to install?*

*Assuming you have authority, and just so I understand what's going on here – this Rule is saying that the initial lease term will be 5 years as set forth in Item (2), but there could be an annual rate adjustment within that lease term as set forth in Item (4)?*

*In Item (7), what are the required Federal, State, and local licenses and permits? Will your regulated public know?*

*What is the intent of Item (8)? What is your authority to require escrow funds? Perhaps I will have a better understanding of this Item once I know who "an agency" is.*

*In Item (9), what is meant by "site specific protocols"? How are these determined?*

*In Item (9), please delete or define "strictly" and "continued"*

Amber May  
Commission Counsel

Date submitted to agency: Friday, January 4, 2018



*Also, in Item (9), please delete either “the” or “any”*

*In Item (10), do you mean something like “No upgrades or change to equipment shall be made without prior approval by the SPO”? How will the SPO make this determination? Please provide the factors that will be used.*

*Is Item (11) necessary?*

*In Item (12), what escrow funds? I don’t see this in the Session Law.*

*In Item (12), please delete or define “satisfactory” in “satisfactory inspection”? By whom is this done and how is this determination made?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

01 NCAC 06F .0102 is adopted under temporary procedures as follows:

### **01 NCAC 06F .0102      TERMS AND CONDITIONS**

The following terms and conditions will apply to the location and installation of equipment by a broadband provider:

- (1) All leases and/or easements will be done on state forms.
- (2) All lease/license agreements will include an initial five year term with two five year renewal periods.
- (3) All lease/license agreements will include an access agreement and a non-exclusive right to install backhaul and fronthaul cabling or fiber, either overhead or buried, which will require a utility easement.
- (4) All lease/license agreements will include an annual rate adjustment provision.
- (5) Rent shall be paid annually.
- (6) Appropriate insurance coverages will be kept in force at all times.
- (7) The applicant will maintain all required Federal, State, and local licenses and permits.
- (8) An Agency will require an escrow fund as part of the broadband provider's lease or license agreement.
- (9) Site specific protocols for construction and maintenance procedures shall be strictly adhered to by the Applicant during installation and during the any continued maintenance.
- (10) Upgrades or changes to equipment, other than replacement of defective units, shall require prior approval from SPO.
- (11) The Agency will not be responsible for supplying space in any existing equipment buildings, nor responsible for supplying electricity.
- (12) Upon termination of the agreement, at the Agency's request, the applicant shall remove all equipment and cabling from the tower, ice-bridge, and fenced property. Upon removal, the escrow funds shall be returned by the Agency within 60 days of satisfactory inspection.

History Note: Authority G.S.146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);  
Temporary Rule Eff. January 28, 2019.