

When the Fiber Meets the Road

The Future is Here: Current Telecommunications Services and Regulation

**Issues & Strategies for Local Government:
Orientation for the LOC Cable-
Telecom Standing Committee**

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Two basic themes: ROW management Compensation for ROW use



When Did the Future Arrive?

Telecom & Cable 101

- ◆ Cable providers begin selling data services
- ◆ Cable providers offer telephony
- ◆ Telephone providers jump into the cable TV market
- ◆ Traditional regulatory mechanisms don't always work
- ◆ Technology is outpacing local ordinances; critical decisions end up being made by the courts

Municipal Rights of Way: Sources of legal authority

- ◆ First, what is the “right of way”?
- ◆ Oregon is unique
 - Constitutional authority is broad
 - Statutes present unique hurdles
 - Role of the Oregon Public Utility Commission
 - Role of local laws

Overview of the 1996 Telecom Act

An Update of Regulatory, Judicial and Legislative Issues

- ◆ Federal law's unique role
- ◆ FCC declaratory rulings
- ◆ An array of court decisions
- ◆ Referenda

Service providers seek changes in laws

- ◆ Changes to the 1996 Telecommunications Act
 - New language inserted—preempted local ROW mgmt and facility-based VOIP products
 - Limitation on franchise requirements
- ◆ 2005-06 Congressional Session: local governments prevailed ... for now.
- ◆ FCC rulemaking is pending

Watch Those Semantics!

- ◆ Cable modem, DSL, Vonage-type VoIP—now an “Information Service”—largely unregulated and beyond local reach for ROW compensation, taxation, and customer care
- ◆ Hybrid and undefined service providers

Telecom & Cable Franchising in Oregon

- ◆ The Oregon Legislature 1997-2005
 - Modification of right of way compensation always a top priority for industry
 - Different ways of achieving the result
 - Require a vote
 - Preempt local authority—move to statewide collection, and more

Legislation Across the U.S.

- ◆ State-by-State preemption attempts
 - Most Recent: Texas restrictions on franchising, and more.
 - Federal Legislation; FCC Rule-Making
 - ◆ Rewrite of the '96 Telecom Act
 - ◆ Eliminate local franchising—national agreements for use of local ROW
 - ◆ S 150 (2004); FCC and DSL/VoIP

Local Regulatory Provisions

- ◆ A Master Utility Regulation ordinance
- ◆ New franchising strategies
- ◆ Revenue options

Right-of-Way Management

When the user walks through the door

- ◆ Are we prepared? Don't expect a telecom or cable company to sign a franchise.
- ◆ Municipal or County Code language
 - Administrative Orders or Resolutions supplementing code
 - Permit requirements
 - Adopted standard specification or conditions
 - Written policies and procedures

User Compensates the Public

- ◆ Franchise or license fees; or bus. privilege taxation
- ◆ Permit fees
 - Administration
 - Inspection
- ◆ Exception fees
 - Unique situations
 - Impacts to public infrastructure
 - Degradation and loss of use
- ◆ Penalties
 - Working without authorization
 - Violating standards

Local Referendum Experience – Overturning CC Decisions

- ◆ At the ballot box – the Springfield Corvallis (and Eugene) experience
 - The ordinance
 - The subsequent referral
 - The campaign
 - The result—be ready in your community

Current legal developments

- ◆ Qwest v. Portland
- ◆ Other recent decisions in Oregon
- ◆ Appeals are pending
- ◆ Verizon's new approach

Tools and Solutions

- ◆ Develop relationships internally
 - Franchise managers
 - Right of way managers
 - Inspectors
 - Legal staff
 - Planning Staff who permit cell towers
 - Peers from other jurisdictions
 - Recognize that your actions have precedential value