

**A Brief Assessment:
The Current State of Dig-Once Policy in the U.S.
(July 2013)**

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July 1, 2013

OVERVIEW

Across the country, the general concept of a “dig-once” policy is widely understood; however, for a variety of reasons, governmental and political, there are immense differences in how legislation is addressed at the state and local level. And because of this the implementation of “dig-once” policies to speed broadband deployment throughout the U.S. continues to be uneven and problematic. Many states and localities have included the concept in their broadband strategic plans, but specific legislation and local ordinances addressing “dig-once” are limited and often vary considerably.

The following overview of the current state of activity in this area is intended to assist cities and their elected and appointed officials in understanding the complexities that exist and help them learn from experiences in other jurisdictions. In addition, there is a lengthy resource document included to help facilitate further research and outreach to colleagues across the country.

Cities and metropolitan areas have significant problems and barriers to overcome when trying to bring technological advancements to their citizens. Most of the problems surrounding implementation of strategic broadband plans can be attributed to legal challenges and litigation concerning rights-of-way and land use law. Clearly, localities should continue to work to develop standards and guidelines for the deployment of conduit and fiber to facilitate economic development and growth. Guidelines encourage a collaborative effort between city departments and agencies leading to coordination during capital improvement projects, rehabilitation, and new construction. Done effectively, significant cost-savings can be achieved and traffic disruption and damage to infrastructure can be prevented.

Throughout the country the city-led installation and/or purchase of fiber has taken a rather cautious path over the course of the past 15 years or so in localities such as Albuquerque, San Antonio, New York City, Los Angeles, Seattle, San Francisco, Chicago, Washington, D.C., and Boston to name a few. Generally, these networks have been built-out to serve City services and community institutions such as hospitals, libraries, and public safety buildings.

In recent years the installation and adoption process has been accelerated throughout many regions of the country due to the implementation and resources provided by federal programs such as the Broadband Technology Opportunities Program (BTOP). Details about this program – including a detailed map of funding – can be found [here](#). Funding provided through this program has led to the development of several broadband implementation toolkits. For example, the U.S. Commerce Department’s National Telecommunications and Information Administration (NTIA) recently released a best practices toolkit based on work that has been accomplished within the BTOP (the toolkit can be found [here](#)). Additionally, through a collaboration of regional and states services as well as funding from BTOP, the State of Florida will be releasing a *Local/Regional Broadband Planning Toolkit* at the end of this month (June 2013). A draft of the toolkit can be found [here](#).

Service provided for residential and business use has historically been driven by industry competition. However, more recently we have seen increasing interest by localities to develop and deploy service provided by a government-owned network. Typically, this occurs in areas where the private market has

failed to deliver competition and the local government owns the utility. Many localities often become frustrated at both the pace and location choice of where private industry chooses to install fiber. Large telecommunication companies such as Verizon or AT&T often prefer to expand services in suburban neighborhoods citing the cost involved with expanding in large cities. Furthermore, “telephone companies are not required to disclose the detailed deployment plans for their fiber networks, which has been a source of frustration for many communities” (see [The Future of Municipal Broadband](#)). It is important to note that several government-owned initiatives have required a large infusion of funding (local, state, or federal) in order to install the network and many have failed to generate sufficient revenue in order to continue to support the network (see [Parsing the Debate over Government-Owned Broadband Networks](#)). Even Chattanooga, which in many ways is seen as the success story within this realm required a one-time infusion of more than \$110 million in federal funding. Additionally, the system remains \$200+ million in debt and repayment isn’t expected until at least 2020 (see [Parsing the Debate over Government-Owned Broadband Networks](#)). Further complicating the issue, multiple states have enacted legislation severely hindering the ability of municipalities to own and operate their own broadband network due to influence from private utilities.

Conversely, despite the difficulties in measuring the monetary relationship between broadband availability and economic development it is becoming increasingly more evident that broadband serves as an essential component to business operability. In fact, “according to a 2011 survey of building owners and property managers, broadband access is one of the most important decision factors for commercial real estate siting after price, parking, and location. Similarly, a national survey found that 77 percent of economic development professionals believe that to attract a new business, a community must have broadband of at least 100 Mbps; in other words, they believe that economic development without broadband is essentially inconceivable” (see [Enhancing Broadband in Lawrence: A Range of Strategic Options](#)).

CITY AND LOCALITY INITIATIVES

In an effort to address some of these challenges, several localities have implemented “joint-build” or “joint-use” agreements or ordinances (i.e. [Los Angeles County](#) and [Ocala, FL](#)) to improve planning, coordination, and efficiency, but they do not necessarily require the deployment of conduit. Often times a municipality will enter into an agreement with the utility directly and develop a cost-share agreement for the project. This has been applied in places such as [Merced County, CA](#) and Riverside, CA. Conversely, several localities have passed ordinances similar to the one recently proposed in San Francisco that requires integrating telecommunications infrastructure into the planning process during the installation or repair of city infrastructure. Additionally, many of these policies or ordinances require the coordination of projects between the municipal departments and the utility leading up to and during the excavation process to ensure that all parties are given the opportunity to complete their project efficiently.

To date, there are few localities that go so far as requiring the placement of conduit. Notably, an [ordinance](#) adopted by the City of Poulsbo, Washington in 2003 requires private real estate developers to install additional conduit in newly dedicated public-rights-of-way to accommodate future telecommunications needs and require telecommunications service providers to use previously installed conduit whenever possible.

In July of 2004, the City of Santa Monica adopted a comprehensive [ordinance](#) to identify a list of common goals in order to provide the latest in telecommunications services to the public. With the goal of minimizing the potential for hitting unknown underground utilities, the ordinance requires that all

utility providers submit to the City "network diagrams" of all their existing installations and to update those plans once a year showing any new work. Additionally, the City also allows for collocation and joint trenching thereby offering open access to multiple providers.

Also in 2004, the City of Loma Linda, CA adopted a comprehensive broadband plan known as the [Connected Community Program](#), which includes policies that promote the deployment of an advanced citywide fiber optic network as well as modifications to building regulations to ensure that development will be designed to meet the needs of future communications technologies. Loma Linda has received international recognition for its ordinance, which provides that "[i]n recognition of the need to provide local residents and businesses within the community with additional options to meet their telecommunications needs, as adopted by city council resolution, all new development projects within the city, regardless of whether such new development falls within the fiber-optic master plan area, and additions that exceed more than fifty percent of the original structure that fall within the fiber-optic master plan area, will be required to participate in, and will be bound by, the connected community program..." (Ord. 629 § 1, 2004)

In 2007, the *Kansas Local Technical Assistance Program (LTAP)* and the *Kansas University Transportation Center* issued the [Guide for Accommodating Utilities within Right-of-Way for Counties and Small Cities in Kansas](#). The guide "examines current issues and practices in Kansas and provides general recommendations that cities and counties can use to manage their right-of-way in the best interest of the traveling public, public agencies and the utilities. It was developed primarily for counties and smaller cities that do not have regulations in place, or that need to update their regulations and procedures."

In June 2011, the City of Sandy, OR approved an [ordinance](#) requiring all new development, including housing developments, to install underground fiber along with other utilities, such as sewer and water. The ordinance further states that developers are required to put conduit all the way into a home and to deed that conduit to the city. Additionally, the City recently announced a public-private partnership for building fiber to the premises (FTTP). A City Council member noted that his only regret about the new conduit ordinance is that Sandy did not have the forethought to pass it 10 years ago—which would have better positioned the city and its private partner to build the FTTP network they currently plan. Similarly, the municipal code of the City of [Jerome](#), ID includes a statute that requires developers to install fiber-optic conduit in all new subdivisions.

It is also important to note that the City of New York recently (April, 2013) launched a [pilot program](#) with Verizon to implement the process of micro-trenching throughout the City. This program - the first of its kind for any large City in the US - will allow Verizon to install fiber-optic conduit and cable throughout the City in a less invasive and cost-effect manner. Most importantly, the conduit will allow for up to four other companies to install their own fiber.

STATE INITIATIVES

As previously mentioned, the State of Florida will be releasing a *Local/Regional Broadband Planning Toolkit* at the end of this month (June 2013). The toolkit will be housed on a publicly available broadband portal that will store all of the relevant information. The portal is currently up and running and includes draft materials. This initiative is a result of state legislation passed in 2012 ([Statute 364.0135](#)). The Statute states that the legislation was passed in order to "promote the efficient and effective deployment of broadband Internet service throughout the state through a coordinated statewide effort." The toolkit "is intended to provide stakeholders with a set of tools and a process for developing effective

community Broadband plans. These plans will enable stakeholders to develop partnerships for addressing issues and resolving problems in the community.”

The State of Vermont and the Vermont Agency of Transportation (VAT) is currently working on a contract for installation of 6 conduits that will stretch 14 miles from Sharon on I-89 to the Hartford rest area on I-91. The conduit will be installed within their interstate right-of-ways that would hold fiber for both long haul and in state purposes. Currently, VAT is not aware of specific policies at the state or local level that address “dig-once”. The majority of Vermont telecommunications infrastructure is aerial- running on telephone poles and Vermont was early and comprehensive in establishing pole attachment rules and guidelines (Vermont State Statutes: [Telegraph, Telephone, and Electric Wires](#); [Permitted use of the right-of-way](#)). Vermont is one of a few states that have a state level policy regarding pole attachment, tariffs and coordination of providers. Most often, telephone poles are jointly owned by both a telecommunications company and a utility.

Additionally, arguably one of the most critical design factors to impact changes to infrastructure going forward in fiber installation is the existence of multiple fiber access points - essentially “exits” off of a main fiber trunk - where service providers can easily tap into the fiber route. To this end, the Vermont Telecommunications Authority (VTA) is currently installing two pilot projects: the [Orange County Fiber Connector Project](#) and the [Newport-to-Hardwick Fiber Optic Project](#). Both of these projects are designed to have open access to multiple fiber access points. The project was authorized in Act 53 of the 2011-2012 legislative session, and is funded with state capital and general appropriations. The Fiber optic strands will be available for lease to multiple broadband providers.

To date, much of the work being done at the state level surrounding the concept of “dig-once” addresses the planning and coordination process, rather than the requirement of installing fiber-optic conduit. For example, California and Massachusetts have both established publicly accessible state-wide databases designed to track and coordinate broadband deployment. The [California Fiber Collaboration Database](#) “allows broadband providers to view upcoming construction projects, notify Caltrans of their interest in including broadband infrastructure in the project, and provides an opportunity for collaboration among companies interested in joint trenching opportunities.” In Massachusetts, the [Massachusetts Broadband Institute](#) (MBI) was established through the *Broadband Act* which was enacted on August 4, 2008. The *Massachusetts Broadband Institute* has a memorandum of understanding with the *Department of Transportation*, as well as with the *Department of Conservation and Recreation*, that requires them to notify the *Massachusetts Broadband Institute* when their major projects are scheduled. This allows the MBI to work with both the state and localities to implement efficient planning policies and practices addressing broadband deployment. In Arizona, the *Digital Arizona Highways Act of 2012* allows the state to install broadband conduit during the construction or repair of a rural highway project. However, funding must be received to cover the cost.

FEDERAL INITIATIVES

At the federal level, we are seeing movement towards the “dig-once” concept. In June of 2012, President Obama issued an [Executive Order](#) to facilitate and accelerate broadband infrastructure deployment on federal lands, buildings, and rights of way, federally assisted highways, and tribal lands. The Order established a working group that is charged with recommending a set of best practices within one year of the Order. We anticipate that these recommendations will be made shortly. Additionally, the Order states several provisions that address “dig-once” and broadband deployment including requiring the Department of Transportation to review and, if necessary, revise its guidance to state departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on state and locally owned rights-of-way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure

deployment. It is anticipated that a list of recommendations as part of the Executive Order will be released within the coming weeks.

Place holder for results of the Federal working group on Executive Order

In 2011, Senator's Mark Warner (D-VA) and Amy Klobuchar (D-MN) introduced the [Broadband Conduit Deployment Act](#) in the Senate, while Representative Anna Eshoo (D-CA) introduced similar legislation in House. To date, this legislation has not been re-introduced.

ASSOCIATION AND STAKEHOLDER INITIATIVES

Multiple Associations and Stakeholder groups have commissioned reports and/or studies to identify the major challenges within broadband deployment. Most recently, the *Fiber to the Home Council* issued [Becoming a Fiber-Friendly Community](#) (May 2013). This guide was designed to serve as a toolkit for communities and local governments that are exploring the deployment of broadband technology. The guide offers a clear set of steps to take when developing and implementing a broadband plan. Included in the recommendations is the adoption of a "dig-once" policy, the inclusion of space on all poles for new attachments, and the installation of ubiquitous fiber conduit.

In 2002, the *National League of Cities*, the *National Association of Telecommunications Officers and Advisors*, the *National Association of Counties*, the *United States Conference of Mayors*, and the *International Municipal Lawyers Association* issued a guidebook titled, [Local Officials Guide: Telecommunications and Rights-of-Way](#). The guide offers a comprehensive view of the major challenges and legal implications surrounding the management of public rights-of-way as a result of the *Telecommunications Act of 1996*.

Additionally, the *National Conference of State Legislatures* has compiled a [database](#) of legislation and statutes that address broadband initiatives; however this was last updated in June of 2012. The *National Association of Governors* issued a [report](#) in May of 2008 highlighting efforts and initiatives within state governments to expand access to broadband. The report focuses heavily on rural deployment, but does not touch on specific trenching policies.

In recent months, the *Public Technology Institute*, the *National Association of Regional Councils*, the *National League of Cities*, the *National Association of Counties*, the *U.S. Conference of Mayors*, and the *National Association of Telecommunications Officers and Advisors* have been working together to highlights some of the important work that is being done around the country with regard to broadband deployment and telecommunications. More recently, the focus has been on some of the successes that came out of the BTOP collaborations.

Below please find a list of resources regarding this issue.

CITY AND LOCALITY INITIATIVES

City of Santa Barbara, CA

Steps for Forming a Private Residential Underground Utilities Benefit Assessment District

<http://www.santabarbaraca.gov/NR/rdonlyres/D3F95674-AC60-43C5-99E0-D341308DC756/0/UUADPacket110508.pdf>

City of Loma Linda, CA

The City adopted a comprehensive broadband plan known as the *Connected Community Program*, which includes policies that promote the deployment of an advanced citywide fiber optic network as well as modifications to building regulations to ensure that development will be designed to meet the needs of

future communications technologies. Loma Linda has received international recognition for its ordinance, which provides that “[i]n recognition of the need to provide local residents and businesses within the community with additional options to meet their telecommunications needs, as adopted by city council resolution, all new development projects within the city, regardless of whether such new development falls within the fiber-optic master plan area, and additions that exceed more than fifty percent of the original structure that fall within the fiber-optic master plan area, will be required to participate in, and will be bound by, the connected community program....” (Ord. 629 § 1, 2004) http://www.lomalinda-ca.gov/asp/Site/_LLCCP/AboutLLCCP/TheLLCCPStandard/index.asp www.lomalinda-ca.gov/asp/Site/LLCCP/AboutLLCCP/Introduction/index.asp

City of Sandy, OR

http://sandy.granicus.com/MetaViewer.php?view_id=&clip_id=357&meta_id=16593

In June 2011, the Sandy City Council approved an ordinance requiring all new development, including housing developments, to install underground fiber along with other utilities, such as sewer and water. The ordinance further states that developers are required to put conduit all the way into a home and to deed that conduit to the city. Additionally, the City recently announced a public-private partnership for building fiber to the premises (FTTP). City Council Member Jeremy Pietzold noted recently that his only regret about the new conduit ordinance is that Sandy did not have the forethought to pass it 10 years ago—which would have better positioned the city and its private partner to build the FTTP network they currently plan.

The **City of Portland, Oregon**, has adopted a broadband strategic plan that establishes a comprehensive municipal policy on enhancing broadband infrastructure.

Connecting to Our Future: Portland’s Broadband Strategic Plan

<http://www.portlandonline.com/shared/cfm/image.cfm?id=354243>

An Excerpt from the Plan regarding “dig-once”: “Implement a ‘dig once’ policy that cost-effectively enables gradual deployment of infrastructure. In this model, a community implements a policy mandating installation of conduit (or fiber) any time a trench or road is open in the public rights-of-way, thus enabling build-up of a critical mass of infrastructure at relatively low incremental cost. Ideally, the conduit and fiber are specified in advance and, of course, they must be impeccably mapped and recorded. Such a policy is most effective where there exists extensive planning and coordination among the various departments responsible for infrastructure and construction (public works, transportation, IT, permitting authorities, and utilities). It also helps to coordinate the construction timelines of various departments so as to facilitate cost-effective placement of conduit and fiber. This strategy enables deployment of infrastructure for backhaul and middle-mile fiber that can be leased to the private sector and stimulate offering of services. It can also enable placement of conduit directly to wireless facilities sites, thus facilitating not only deployment of next-generation wireless services but also reducing the cost for new competitors to enter the market. This strategy recognizes that certain sections of our city are rich with fiber infrastructure such as in the Central Business District. If moved to the work plan stage, the ‘dig once’ strategy will be planned for the sections of Portland that are currently deficient in fiber infrastructure.”

Humboldt County, California, has adopted a comprehensive plan whose *Telecommunications Element* articulates policies, such as “dig-once” policies, designed to promote broadband access, reliability and capacity (<http://co.humboldt.ca.us/gpu/documentsplan.aspx>). “Dig-once” policies require companies using public-rights-of-way to agree to share trenching, conduit and other joint-use infrastructure before new, invasive uses are approved.

An Ordinance adopted by the **City of Poulsbo, Washington**, require private real estate developers to install additional conduit in newly dedicated public-rights-of-way to accommodate future telecommunications needs and require telecommunications service providers to use previously installed conduit whenever possible.

<http://www.mrsc.org/ords/p58o2003-25.pdf>

The City of Jerome, Idaho

http://www.ci.jerome.id.us/wwwroot/userfiles/files/planning_and_zoning/title_16.pdf

The municipal code of City of Jerome, ID includes a statute that requires developers in all new subdivisions to install fiber-optic conduit.

The **County of Merced, California** entered into a joint build agreement with CVIN, LLC to share the costs of the trench construction in order to lay conduit and install fiber optics.

http://www.co.merced.ca.us/BoardAgenda/2012/MG175599/AS175632/AS175636/AI175736/DO174921/all_pages.pdf

Similarly, multiple other localities have established “joint use” or “joint build” agreements such as, **Los Angeles County** (<http://dpw.lacounty.gov/general/forms/download/2175.pdf>) and the **City of Ocala, Florida** (http://www.ocalafl.org/uploadedFiles/Utility_Services_Redesign/Fiber%20Conduit_Rules_and_Regulations_rev07122012.pdf)

Roanoke Valley-Alleghany Regional Commission (VA)

Roanoke Valley Broadband Initiatives & Task Force Recommendations (February, 2013)

The final recommendations include the development and implementation of “dig-once” requirements for construction projects, including the placement of open-access conduit for optical fiber cable.

http://www.rvarc.org/work/broadband/RVARC_Broadband_News%20Release_FINAL.pdf

<http://www.rvarc.org/work/broadband/final%20broadband%20task%20force%20recommendations.pdf>

http://www.rvarc.org/work/broadband/Roanoke_broadband_exec_summary_final.pdf

<http://civsourceonline.com/2013/02/08/dig-once-rules-and-broadband-authorities-on-the-rise-as-governments-push-for-faster-broadband-buildouts/>

New York City Launches Micro-trenching Pilot to Enable Rapid Deployment of Fiber Optic Cabling Across the Five Boroughs

http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pagelD=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2013a%2Fdoitt_04-02-13.html&cc=unused1978&rc=1194&ndi=1

<http://www.bloomberg.com/news/2013-04-02/verizon-new-york-city-agree-to-test-way-to-spread-fiber-network.html>

Micro-trenching would allow enough space for at least four other carriers to pass their cables through the same area, and the pilot program is open to additional communications companies, the city said. That could provide a path for more competition for the market, Merchant said.

City of San Francisco

Fiber Optics for Government and Public Broadband: A Feasibility Study

Prepared for the City and County of San Francisco (January 2007)

<http://www.ctcnet.us/SFFiberFeasibilityReport.pdf>

City of Lawrence, KS

Enhancing Broadband in Lawrence: A Range of Strategic Options

A comprehensive study on the state of communications infrastructure within the City of Lawrence, KS.

http://www.lawrenceks.org/budget_files/2013/cip/Lawrence_Broadband_Report-final-042313.pdf

City of Lawrence, KS

Fiber Projects Overview

http://www.lawrenceks.org/budget_files/2013/cip/City_of_Lawrence_Fiber_Report_Web.pdf

Guide For Accommodating Utilities Within Right-of-Way For Counties & Small Cities in Kansas

<http://www.kutc.ku.edu/pdffiles/ROWguide2007.pdf>

“This guide examines current issues and practices in Kansas and provides general recommendations that cities and counties can use to manage their right-of-way in the best interest of the traveling public, public agencies and the utilities. It was developed primarily for counties and smaller cities that do not have regulations in place, or that need to update their regulations and procedures. The guide attempts to concentrate on major issues and minimize additional paperwork for both the utilities and the local agencies. Conditions differ in each city and county, some modification of the recommendations may be needed to fit local conditions. Review by the city or county attorney working with the public works staff and local utilities is essential to develop the optimum balance between regulations and reasonability.”

The Future of Municipal Broadband Business, Technology and Public Policy Implications for Major U.S. Cities

This report was commissioned by Boston, Chicago, and San Francisco in 2008. The report offers insight into some of the challenges facing major cities throughout the country in regards to broadband technology.

http://www.cityofchicago.org/dam/city/depts/doit/supp_info/DEI/MunicipalBroadband.pdf

STATE INITIATIVES

Arizona

Arizona—SB1402

SB 1402 or the *Digital Arizona Highways Act of 2012*, allows the state to install broadband conduit in connection with a rural highway construction project if funding is received to cover the cost. The state will lease the conduit to providers at a cost-based rate and coordinate with providers regarding planning and relocating of broadband conduit and any related facilities within rights-of-way at the provider’s expense if future highway improvements make the relocations necessary. A provider’s access to any broadband facilities within the public rights-of-way for initial installation and infrequent access for maintenance purposes may be limited and other actions may be necessary to maintain highway safety. Signed into law April 5, 2012. http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1402&Session_ID=107

California

California Public Utilities Commission: *California PUC Electric Rule 20 Governs Conversion of Overhead Lines to Underground*

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CD4QFjAD&url=ftp%3A%2F%2Fftp.cpuc.ca.gov%2Fpuc%2Fcec%2Felectric%2Fsummary%2520of%2520undergrounding%2520program-%2520rev.%25204-17-07.doc&ei=WNDBUbe0Oevy0wGCyoCACw&usg=AFQjCNF4K9b4-IA4nZa5dSwVEUVvUwZ1hA&sig2=p-V6qr4wtSKxDvpN3aHwXA&bvm=bv.47883778,d.dmQ>

California – Governor Schwarzenegger 2006 Broadband Executive Order

Highlights of the executive order include:

- Establishing a broadband task force to recommend additional steps the Governor can take to promote broadband access and usage
- Designating one agency -- Business, Transportation & Housing (BT&H) -- as lead coordinator for implementing the state's broadband policy, to help ensure cohesion, speed and efficiency
- Directing BT&H to create a database linking private broadband companies with state transportation agencies, permitting companies to better coordinate fiber optic installation, leading to more consumer choice and efficient pricing
- Establishing a pricing policy for private companies paying for "right-of-way" access to state roads. Previously, charges to lay fiber varied widely -- the order sets pricing based on actual costs incurred by the state
- Calling for streamlined, expedited rights-of-way permitting procedures to accelerate broadband deployment
- Directing BT&H to collect and analyze current broadband information so the state can accurately map existing resources
- Directing the Department of General Services to make wireless Internet access available in State buildings and increase video streaming to deliver public meetings, training materials and other state resources online
- Directing state agencies to enable VOIP technologies for business and government use, and include broadband conduit in their infrastructure planning

California Broadband Task Force Recommendations (January 2008)

- Build out high-speed broadband infrastructure to all Californians
- Develop model permitting standards and encourage collaboration among providers
- Increase the use and adoption of broadband and computer technology
- Engage and reward broadband innovation and research
- Create a statewide e-health network
- Leverage educational opportunities to increase broadband use
- Continue state-level and statewide leadership

THE CALIFORNIA BROADBAND TASK FORCE PRELIMINARY REPORT (June 2007)

http://www.cio.ca.gov/broadband/pdf/CBTF_Prelim_Report.pdf

COORDINATE CONDUIT DEPLOYMENT: Require all state agencies to adopt a single, technology-neutral standard for the type of conduit placed into state rights-of-way. This standard must (i) ensure fair access and equitable usage and (ii) address sizing of conduit and inner-duct.

THE CALIFORNIA BROADBAND TASK FORCE FINAL REPORT (January 2008)

http://www.cio.ca.gov/broadband/pdf/CBTF_FINAL_Report.pdf

California Fiber Collaboration Database

The Fiber Collaboration Database allows broadband providers to view upcoming construction projects, notify Caltrans of their interest in including broadband infrastructure in the project, and provides an opportunity for collaboration among companies interested in joint trenching opportunities. <http://www.dot.ca.gov/broadband/>

California Model Permitting Standards

Developing a public-private partnership between local governments and broadband providers to endorse permitting standards will improve the speed with which broadband is deployed.

<http://www.tellusventure.com/library/duct/>

The **State of Florida** will be releasing a *Local/Regional Broadband Planning Toolkit* at the end of this month (June 2013). The toolkit will be housed on a publicly available broadband portal that will store all of the relevant information. The portal is currently up and running and includes draft materials. This initiative is a result of state legislation passed in 2012 ([Statute 364.0135](#)). The Statute states that the legislation was passed in order to “promote the efficient and effective deployment of broadband Internet service throughout the state through a coordinated statewide effort.”

The toolkit “is intended to provide stakeholders with a set of tools and a process for developing effective community Broadband plans. These plans will enable stakeholders to develop partnerships for addressing issues and resolving problems in the community.”

Broadband Portal: <http://www.tbrpc.org/bbplan/manual.html>

Hawaii Broadband Initiative – launched August 2011 by Governor Abercrombie

The Hawaii Broadband Initiative has four goals:

1. Ensure ubiquitous access to world-class gigabit-per-second broadband service at affordable prices throughout Hawai'i.
2. Increase the use of ultra-high-speed broadband services and applications for economic development, healthcare, education, public safety, governmental efficiency and civic engagement.
3. Reduce Hawai'i's barriers to global participation and ensure equitable access for all our islands, including the most remote areas of the state.
4. Develop and implement a modern regulatory and permitting environment that supports and advances investment in broadband infrastructure and public services.

Hawaiian 2012 Legislation

SB2236 - Special Purpose Revenue Bonds; Clearcom, Inc.; Hawaii Broadband Initiative (enacted)

Includes special purpose revenue bonds for assisting utilities serving the general public in providing telecommunications. Authorizes the issuance of \$100,000,000 in special purpose revenue bonds to assist Clearcom, Inc., or a partnership headed by Clearcom, Inc., with planning, permitting, designing, constructing, equipping, and operating broadband infrastructure throughout the State. Lapses the authorization to issue special purpose revenue bonds on June 30, 2017.

HB1342 - Broadband Permits; Automatic Approval; Infrastructure (enacted)

Requires the State and counties to approve, approve with modification, or disapprove all broadband-related permits within sixty business days or the application will be deemed approved on the sixty-first business day. Prior to any public notice and public hearing required under law, requires the owner or owners of a property within a radius of fifty yards of a project relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, to be notified of the project. Effective July 1, 2012. Sunsets on June 30, 2017. (SB2235 HD2)

SB2534 - Public School Facilities; Public Land Development Corporation

Establishes the School Facilities Special Fund to accept revenue generated from the non-permanent disposition of public school lands and facilities to fund school facility construction and upgrade to meet

twenty-first century school standards. Includes a reporting requirement. Effective July 1, 2012. (SB2534 HD2)

SB1161 - Broadband; Permit Exemptions

Exempts certain broadband infrastructure improvements from state and county permitting requirements. Exempts a person or entity from any requirement to upgrade or replace existing utility poles when using that pole to install new or improve existing telecommunications cables, under certain conditions that includes safety and engineering requirements. Allows public utilities and broadband providers to recover prudently incurred costs related to the planning, engineering, construction, installation, or replacement of utility poles. Establishes requirements for utilities in cases where access to a utility pole is denied. Effective July 1, 2012. (SB1161 HD3)

HB2524 - Telecommunications and Cable Television Services Regulation; Communications Commission; Appropriation

Establishes the communications commission within the DCCA; directs the commission to regularly study the regulatory framework and provisions governing telecommunications carriers and cable operators to develop and update comprehensive policies and recommendations for administrative and statutory changes to further the deployment of broadband services; promote the interests of the State; and provide incentives, expedite procedures, and establish policies to increase investment in and further the deployment of broadband infrastructure within the State; requires two demonstration projects to expedite permitting for broadband infrastructure; requires 1/1/2013 status report to the legislature on the outcomes of the demonstration projects to expedite permitting processes for the construction of broadband infrastructure, and recommended legislation to streamline regulation of telecommunications carriers and cable operators in the State by 1/1/2014. Appropriates funds. (SD2)

Idaho Broadband Framework: Expanding Statewide Broadband Development & Use

<http://www.linkidaho.org/lid/docs/IDState%20Broadband%20Framework.pdf>

Currently, the Idaho Transportation Department (ITD) has a practice of laying conduit when building roads. ITD could enhance their outreach and broadcasting about their project timelines, which would enable other partners to collaborate with them or access trenches when open. In addition, local governments have the opportunity to encourage conduit to be laid as part of infrastructure projects like sewer and water and can even pass an ordinance to ensure that it is done. For example, the City of Jerome has a subdivision ordinance or code that requires installation of fiber optic conduit in all open trenches when developing a subdivision (16.28.150 (P)). These two actions could encourage and facilitate deployment of fiber conduit as part of public works projects.

Illinois

Mixing Water and Broadband: Dig Once rules for water projects mean lower cost fiber to businesses and homes

<http://www.broadbandillinois.org/news/181>

What's the "water + broadband" recipe for cost-cutting and faster Internet? Since water projects are big ticket public works matters for local governments to pay for, they become vital to plans for low cost installation of fiber conduit in neighborhoods and business districts.

Connect Kentucky

Computers 4 Kids

Computers 4 Kids (C4K) is an innovative project that brings together public and private partners to help disadvantaged children and their families join the Information Age. This is accomplished by placing

computers in the hands of disadvantaged populations so that they have access to abundant technological resources and can perform basic computing functions.

In Kentucky, Computers 4 Kids has successfully facilitated cooperation among private partners, corporate foundations and state government to place computers into the hands of underprivileged and disadvantaged individuals. ConnectKentucky's C4K is meeting the challenge of including these citizens in the digital age through these creative public-private partnerships. C4K, as an initiative, is as flexible as today's technology. C4K has delivered nearly 3,000 Internet-ready computers to disadvantaged individuals and populations across the state.

Connect ME

HP1174 (2010) – (enacted)

Establishes a broadband policy for the state. Promotes sustainable private investment to increase broadband service that exceeds the minimum levels throughout the state; requires agencies to assist; requires development of target prices and competitively neutral discounts to customers in areas where services are more expensive than the average metropolitan rates and requires the ConnectME Authority to develop target prices for broadband services and establish discounts in rural areas.

http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC586.pdf

HP1265 (2010) – (enacted)

Makes statutory changes to facilitate the efforts of dark fiber providers in order to enable rapid broadband development and expansion. Defines dark fiber provider as an entity providing fiber optic cable without transmission equipment and dark fiber to all carriers and end users on an open-access basis and which is secured by security interests granted to the Federal Government; requires dark fiber providers to file rate schedules with the PUC and post their rates on public websites; allows dark fiber providers to use the public right-of-way for its facilities and enter into joint use agreements by public utility and cable television facilities.

http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC612.pdf

Highway Broadband Utilization Study, Dig Once White Paper

Prepared for the State of Maine (March, 2013)

<http://www.maine.gov/connectme/about/news/news.shtml?id=516714>

<http://maine.gov/connectme/grants/ntia/docs/Highway%20Broadband%20Utilization%20Study.pdf>

Massachusetts

The Massachusetts Broadband Institute (MBI)

<http://broadband.masstech.org/>

Governor Deval Patrick created the Massachusetts Broadband Institute when he signed the Broadband Act on August 4, 2008. Chapter 231 of the Acts of 2008 established MBI as a new division within the Massachusetts Technology Collaborative. The legislation provides up to \$40 million bonding authorization to close broadband gaps.

Minnesota Annual Report and Broadband Plan

Governor's Task Force on Broadband

<http://archive.leg.state.mn.us/docs/2012/other/121294.pdf>

A "dig-once" policy was proposed as part of the 2012 recommendations:

Policy Proposal: Implement a formal "Dig-Once" process to coordinate highway construction and broadband deployment projects

Example: This year, Arizona enacted the *Digital Arizona Highways Act of 2012*, which allows the state to install broadband conduits in conjunction with rural highway construction projects. The Task Force recommends that Minnesota establish a similar formal process to both allow the state to install conduit and provide an opportunity for broadband providers to install conduit, fiber, etc. when road construction projects are already scheduled to maximize opportunities for broadband providers and state, county and local transportation departments to collaborate.

Outcomes: The Task Force believes this proposal will reduce costs related to a lack of coordination and communication regarding rights-of-way, roadway and broadband infrastructure between transportation agencies and broadband providers. This would reduce costly multiple openings of infrastructure corridors, minimize inconvenience for travelers and citizens while reducing infrastructure project length. In addition, the Task Force believes it will spur engagement between state government and private providers. Ultimately, the Task Force believes enacting this proposal will help advance Minnesota towards achieving its statutory broadband goals.

Metrics: Successful implementation of this proposal could be measured by tracking the number of broadband installation projects that are undertaken in conjunction with road construction projects in Minnesota.

State of Minnesota House of Representatives Session 2013 House Bill Number 1255

[https://www.revisor.mn.gov/bills/text.php?](https://www.revisor.mn.gov/bills/text.php?session=ls88&number=HF1255&session_number=0&session_year=2013&version=list)

[session=ls88&number=HF1255&session_number=0&session_year=2013&version=list](https://www.revisor.mn.gov/bills/text.php?session=ls88&number=HF1255&session_number=0&session_year=2013&version=list)

See Sections 1 and 4

Mississippi Broadband Technology Tax Credit

Broadband Technology Tax Credits are credits that can be applied to state income or franchise tax of telecommunications businesses. These credits are earned based on a percentage of the cost of equipment used in the deployment of broadband technology in the state. To be eligible for the credit, the items must be sold to, billed to, and paid for by the company receiving the credit. Broadband Technology Tax Credits are credits that are provided to entities to encourage the deployment of high-speed internet access throughout the state, with an emphasis on rural areas. Qualifying equipment used in the deployment of broadband technologies includes asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexes, fiber optics, and related equipment. Annual credit amounts are calculated as a percentage of eligible expenditures, based on equipment location, and is available for 10 years. The credits can be claimed against income or franchise tax, but the total amount of credits taken over the 10 year period cannot exceed 100% of the cost of the equipment. Credits can be used to offset up to fifty percent of the entity's income or franchise tax liability, and unused credits can be carried forward up to ten years. Broadband Technology Tax Credits are awarded and administered by the Mississippi Department of Revenue. For further details, see the Mississippi Tax Incentives, Exemptions, and Credits on the Mississippi Department of Revenue website http://www.dor.ms.gov/docs/policy_incentivebookfinal.pdf <http://www2.mississippi.org/mda-library-resources/finance-tax-info/tax-exemptions-incentives-and-credits/broadband-technology-tax-credit.html>

North Carolina

General Assembly Session 2013 House Bill 713

<http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H713v1.pdf>

Installation of telecommunications conduit within State right-of-way

As authorized in G.S. 136-18(44), the Department shall include in its planning for new roads and for improvements to existing roads the installation of conduit for telecommunications cables when all of the following apply:

- (1) Less than fifty percent (50%) of households in the county where the road project is located have access to high-speed data or telecommunications services. If a project is located in more than one county, the Department may evaluate each county separately under this subdivision.
- (2) A provider of high-speed data or telecommunications services provides the Department with a letter indicating its interest in leasing the conduit from the Department at any time within five years of completion of the project."

The **State of Vermont** and the **Vermont Agency of Transportation (VAT)** is currently working on a contract for installation of 6 conduits that will stretch 14 miles from Sharon on I-89 to the Hartford rest area on I-91. The conduit will be installed within their interstate right-of-ways that would hold fiber for both long haul and in state purposes.

Currently, VAT is not familiar with any specific policies at the state or local level that address "dig-once". The majority of Vermont telecommunications infrastructure is aerial- running on telephone poles and Vermont was early and comprehensive in establishing pole attachment rules and guidelines (Vermont State Statutes: [Telegraph, Telephone, and Electric Wires](#); [Permitted use of the right-of-way](#)). Vermont is one of a few states that have a state level policy regarding pole attachment, tariffs and coordination of providers. Most often, telephone poles are jointly owned by both a telco and a utility.

Additionally, arguably one of the most critical design factors to impact changes to infrastructure going forward in fiber installation is the existence of multiple fiber access points - essentially "exits" off of a main fiber trunk - where service providers can easily tap into the fiber route. To this end, the **Vermont Telecommunications Authority (VTA)** is currently installing two pilot projects: the *Orange County Fiber Connector Project* and the *Newport-to-Hardwick Fiber Optic Project*. Both of these projects are designed to have open access to multiple fiber access points. The project was authorized in Act 53 of the 2011-2012 legislative session, and is funded with state capital and general appropriations. The Fiber optic strands will be available for lease to multiple broadband providers.

http://www.telecomvt.org/FiberOpticProjects_OrangeCounty.php

<http://www.telecomvt.org/node/186>

<http://vtdigger.org/2011/06/17/fiber-optic-installation-begins-along-interstate/>

Vermont Act 53 (passed 2011) <http://www.leg.state.vt.us/docs/2012/Acts/ACT053.pdf>

- Establishes policies and programs to achieve statewide cellular and broadband deployment in Vermont by the end of 2013.
- Makes various changes to the process for issuing environmental, siting, and land use approvals for telecommunications facilities.
- Contains provisions related to public service regulation.
- Makes the secretary of administration or designee responsible for the coordination of telecommunications initiatives within the executive branch and requires an action plan to accomplish the goals of universal availability of broadband and cellular services, and to track the deployment of telecommunications projects.

Virginia

Report of the State Corporation Commission to the Governor and the General Assembly of Virginia: **Placement of Utility Distribution Lines Underground** (2005)

"This report provides information on the feasibility of placing underground the currently existing overhead utility distribution lines and any new distribution lines, the costs that would be incurred, and the options for funding such underground placement."

<http://leg2.state.va.us/dls/h&sdocs.nsf/>

[fc86c2b17a1cf388852570f9006f1299/72f6544094c5126f85256ec500553c4d/\\$FILE/HD30.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/fc86c2b17a1cf388852570f9006f1299/72f6544094c5126f85256ec500553c4d/$FILE/HD30.pdf)

LinkWYOMING State Broadband Framework

<http://www.linkwyoming.org/lwy/docs/LinkWYOMING%20Broadband%20Framework.pdf>

Right of Way and Dig-once

Wyoming focus group participants and providers recommended that the state *increase right of way access along interstate and secondary corridors*. Allowing access to right of way in these areas would encourage high-speed broadband deployment, increase competition in the broadband market, and facilitate the expansion of broadband in a more timely and cost effective manner. To respond, the Wyoming Department of Transportation (WyDOT) has been modifying their processes to improve access to state right of way. They are trying to maximize opportunities when trenches are open for others to deploy conduit and fiber resources. They are also trying to ensure providers remain open to lease agreements for fiber in state right of way.

Two examples of right of way policies from other states follow:

- The neighboring state of South Dakota has allowed telecommunication utility access to interstate highway right of way without compensation to the State since 1997. Neighboring states like South Dakota facilitate broadband installation and expansion by allowing access to interstate right of way.
- Louisiana's Department of Transportation & Development (LaDOTD) has a compensation program for telecommunications access to their right of way that allows the State to charge a cash value for the permit; although, the State prefers to barter for the equivalent value in services to LaDOTD. This allows for quick procurement of the needed ITS communication services directly from the State's partner without having to go through the State's telecommunications procurement system.

In addition, local governments have the opportunity to encourage conduit to be laid as part of infrastructure projects like sewer and water and can even pass an ordinance to ensure that it is done. These two actions could encourage and facilitate deployment of fiber conduit as part of public works projects.

FEDERAL INITIATIVES

Executive Order: Accelerating Broadband Infrastructure Deployment (June 2012)

<http://www.whitehouse.gov/the-press-office/2012/06/14/executive-order-accelerating-broadband-infrastructure-deployment>

See section 5, *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction*

Mapping NTIA's Broadband Investments

"To illustrate the impact of the \$4 billion Recovery Act investment in the Broadband Technology Opportunities Program (BTOP) and State Broadband Initiative (SBI), NTIA has developed a user friendly online tool to visualize the high-speed broadband networks, public computer centers and Internet training programs funded across the country."

<http://www.ntia.doc.gov/blog/2013/mapping-ntias-broadband-investments>

GAO: Planning and Flexibility Are Key to Effectively Deploying Broadband Conduit through Federal Highway Projects (June 2012)

<http://www.gao.gov/assets/600/591928.pdf>

2010 National Broadband Plan, *Connecting America*

<http://www.broadband.gov/plan/6-infrastructure/#r6-7>

Recommendation 6.8: Congress should consider enacting “dig-once” legislation applying to all future federally funded projects along rights-of-way (including sewers, power transmission facilities, rail, pipelines, bridges, tunnels and roads).

Klobuchar, Warner Urge Immediate Action on Legislation to “Dig Once” for Broadband Information Superhighway

http://www.klobuchar.senate.gov/newsreleases_detail.cfm?id=336099&

<http://blandinonbroadband.org/2012/06/14/klobuchar-warner-initiative-to-dig-once-for-broadband-infrastructure-advanced-by-presidents-executive-order/>

Rep. Anna Eshoo urges federal 'dig once' policy to support broadband

http://eshoo.house.gov/index.php?option=com_content&view=article&id=1115:santa-cruz-sentin..

http://www.mercurynews.com/san-mateo-county-times/ci_19458893

Congressional Research Report - The National Broadband Plan

<http://www.fas.org/sgp/crs/misc/R41324.pdf>

Congressional Research Report - The National Broadband Plan Goals: Where Do We Stand?

<http://www.fas.org/sgp/crs/misc/R43016.pdf>

Recommendations of Tom Wheeler, Chairman, Technical Advisory Council

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.pdf

<http://transition.fcc.gov/oet/tac/TACMarch2011mtgfullpresentation.pdf>

Model an Online Deployment Coordination System. The TAC believes that timely access to underground facilities has a direct bearing on infrastructure costs and deployment. The FCC should develop a “white label,” web-based communication tool that can be adopted and labeled as their own by localities to provide advance notification of planned infrastructure projects. Such a web-based capacity would allow all those who must excavate rights-of-way to coordinate openings (i.e., “dig-once”) and thus speed deployment and reduce costs and civic disruption. Any state or municipality could voluntarily use the FCC model to implement its own “reverse one-call” system to provide notification of new infrastructure projects.

ASSOCIATION AND STAKEHOLDER INITIATIVES

Fiber to the Home Council

[*Becoming a Fiber-Friendly Community*](#) (May 2013)

National League of Cities, National Association of Telecommunications Officers and Advisors, National Association of Counties, United States Conference of Mayors, and International Municipal Lawyers Association

[*Local Officials Guide: Telecommunications and Rights-of-Way*](#) (2002)

National Conference of State Legislatures

[Broadband Database](#)

National Association of Governors

[State Efforts to Expand Broadband Access](#) (May 2008)

REPORTS/STUDIES/TOOLKITS

TECHNET'S 2012 STATE BROADBAND INDEX

http://www.technet.org/wp-content/uploads/2012/12/TechNet_StateBroadband3a.pdf

Arizona Utility Coordinating Committee

Public Improvement Project Guide <http://arizona.apwa.net/chapters/arizona/documents/PIPG%202011%281%29.pdf>

Municipal Fiber to the Home Deployments: Next Generation Broadband as a Municipal Utility

http://s.ftthcouncil.org/files/municipal_ftth_systems_october_2009_final_oct09_1.pdf

National Association of Governor's Issue Brief: State Efforts to Expand Broadband Access (May 2008)

<http://www.nga.org/files/live/sites/NGA/files/pdf/0805BROADBANDACCESS.PDF>

National Conference of State Legislatures: Broadband Statutes

<http://www.ncsl.org/issues-research/telecom/broadband-statutes.aspx>

Brief Engineering Assessment: Efficiencies available through simultaneous construction and co-location of communications conduit and fiber

<http://www.ctcnet.us/CoordinatedConduitConstruction.pdf>

National Telecommunications and Information Administration Broadband Adoption Toolkit

http://www2.ntia.doc.gov/files/toolkit_042913.pdf

The Fiber to the Home Council Becoming a Fiber-Friendly Community

<http://www.ftthcouncil.org/p/bl/et/blogid=2&blogaid=214>

Brief Engineering Assessment: Efficiencies available through simultaneous construction and co-location of communications conduit and fiber

Prepared for the National Association of Telecommunications Officers and Advisors and the City and County of San Francisco (August 2009)

<http://www.ctcnet.us/CoordinatedConduitConstruction.pdf>

ARTICLES

Chicago aims for Internet access in parks, underserved neighborhoods

<http://www.suntimes.com/news/metro/15350928-418/emanuel-aims-to-bring-internet-access-to-chicago-parks-underserved-neighborhoods.html>

"[Mayor] Emanuel recalled the recent conversation he had with Eric Schmidt, chairman and CEO of Google. "I was talking to him about our investment in our water infrastructure. I told him that we're replacing 900 miles of water pipe, 650 miles of sewer, 160,000 catch basins. He said it's a unique opportunity, given the fact that you're actually gonna be ripping up the roads, to lay the broad-band and the dark fiber throughout the city," the mayor said."

Yanking Broadband from the Slow Lane

<http://www.nytimes.com/2013/05/08/business/google-project-may-spur-broadband-competition.html?emc=eta1&r=0>

"Internet access is constraining what people can do," Mr. Medin said. "This puts American companies at

a disadvantage. It puts Google in a place where we can't innovate as well as we could."

Creative Financing for Broadband Infrastructure

<http://blogs.cisco.com/cle/creative-broadband-infrastructure-financing/>

"One of the challenging issues about deploying broadband – so they say – is the cost. Access rights. Construction. Lawsuits. All have an effect on time and resources. That's why it was particularly startling when I started finding references to communities that had found ways to deploy broadband using creative financing and cost structures."

Laying Fiber: Creative Broadband Installations

<http://blogs.cisco.com/cle/laying-fiber-creative-broadband-installations/>

"For financial creativity, few can beat the city of Santa Monica, California. To create its city-wide fiber network, CityNet, Hayes notes, its politicians lobbied for federal tax money – some from the Department of Education to connect the schools, some from the Department of Homeland Security to connect security cameras, and some from the Department of Transportation to connect its traffic lights."

"The result was an underground fiber backbone running throughout the city, some of which they then leased to Verizon for its FIOS high-speed networks. There are enough film production facilities in Santa Monica, says Hayes, and enough previously installed fiber elsewhere in Los Angeles, that the studios are able to transmit daily shooting (aka rushes) electronically via fiber rather than physically."

How to Keep Costly Road Repairs to a Minimum

<http://www.governing.com/columns/smart-mgmt/col-keepin-costly-road-repairs-down.html>

Massachusetts has taken a big step to integrate its broadband infrastructure installation with its roads, bridges and utilities. The goal -- as with all this kind of coordination -- can be expressed in just two words: Dig once.

The Massachusetts Broadband Institute (MBI) keeps tabs on all projects in the state, coordinating individual events among players and setting the stage for those entities to plan. The institute has a memorandum of understanding with the Department of Transportation, as well as with the Department of Conservation and Recreation, that requires them to notify MBI when their major projects are scheduled. That gives organizations the opportunity to install broadband in the same time frame as, say, a repaving project.

"Having those relationships and those understandings so you are not caught unawares of those large projects is first and foremost," says MBI Director Judith Dumont.

The Broadband Institute also helps cities and towns prepare their policies when there are opportunities to coordinate broadband deployment as it comes through the town. "If we have 45 towns to run broadband through," says Dumont, "and they had to start flatfooted in every town, efficient coordination isn't going to happen."

Why Are There No Big Cities with Municipal Broadband Networks?

<http://www.theatlanticcities.com/technology/2013/03/why-are-there-no-big-cities-municipal-broadband-networks/4857/>

The Institute for Local Self-Reliance recently compiled this map of all the communities in the country that control their own access to the Internet. At best count, there are about 340 of them with publicly owned fiber-optic or cable networks, serving either all or parts of town. In these places, those residents and businesses served don't have to spar with telecom giants like AT&T and Comcast. They get their Internet instead – like many communities do their electric utility – straight from the city.

Community Network Map <http://www.muninetworks.org/communitymap>

Communities invest in telecommunications networks for a variety of reasons - economic development, improving access to education and health care, price stabilization, etc. They range from massive

networks offering a gig to hundreds of thousands in Tennessee to small towns connecting a few local businesses.

This map tracks a variety of ways in which local governments have invested in wired telecommunications networks as well as state laws that discourage such approaches.

Parsing the Debate over Government-Owned Broadband Networks

http://www.nyls.edu/user_files/1/3/4/30/83/ALCP%20-%20GONs%20Overview%20-%20April%202013.FINAL.pdf

LITIGATION

Below please find a list of select ruling and FCC actions. Please note this list is sourced from the *Local Officials Guide: Telecommunications and Rights-of-Way (2002)*. The guide was issued by the *National League of Cities*, the *National Association of Telecommunications Officers and Advisors*, the *National Association of Counties*, the *United States Conference of Mayors*, and the *International Municipal Lawyers Association*. The guide can be found in its entirety [here](#). Additionally, please note the following disclaimer listed in the guide: “The reader is advised that these are only a select sample of cases decided at the time of the preparation of this guide. The reader should not rely upon the information summarized herein, or rely upon the status of the cases being summarized. All due diligence should be used in ascertaining the individual legal status of any course of litigation being referred to herein.”

SELECT RULINGS

TCG New York, Inc. v. City of White Plains, 125 F. Supp. 2d 81 (S.D.N.Y. 2001): Court upheld compensation requirements including 5% of gross revenues; a minimum annual fee; reimbursement for costs; and an in-kind requirement for conduit constructed for the city by TCG. However, it also held that burdensome application requirements plus a lengthy approval process could constitute a prohibition on entry triggering Section 253(a). The case is currently on appeal before the US Court of Appeals for the Second Circuit.

BellSouth Telecommunications, Inc. v. City of Mobile, 2001 WL 394909 (S.D. Ala. Mar. 30, 2001); appeal dismissed, No. 01-13218-C (11th Cir. August 30, 2001): Court upheld the city Telecommunications permit ordinance which required only fees explicitly covering administrative costs. The regulatory provisions are confined to quintessential rights-of-way management issues including universal per- mitting; bundled permitting; increased permit fees and restoration standards.

City of Auburn v. Qwest Corporation, 247 F. 3d 966 (9th Cir. 2001), – cert. denied U.S. (Jan. 7, 2002): Washington cities sought a declaration from the lower court that US West must pay relocation costs for the necessary relocation of its facilities along the public rights-of-way to facilitate public improvement projects. Qwest counter claimed that federal and state law preempted the rights- of-way/ telecommunications ordinances of these cities. The Federal District Court ruled in favor of the cities’ relocation claim and decided not to rule on the counterclaim, finding that the challenge of the ordinances was not “ripe” for court action. Qwest appealed that decision to the 9th Circuit Court of Appeals. The Court of Appeals for the Ninth Circuit ruled in favor of the cities, upholding the lower court decision regarding the relocation issue. However the court, believing the challenge of the ordinances

was ripe, and despite the fact that there was no fact-finding below, ruled in favor of Qwest regarding its §253 counterclaim. The court stated that the cities' telecommunications rights-of-way ordinances were preempted under Section 253 the federal Telecommunications Act of 1996 and Washington State law enacted Senate Bill 6676, effective June 2000. The court subsequently denied a petition for rehearing, but made several amendments to the original opinion, including a finding that franchise requirements are not per se preempted under the federal Telecommunications Act of 1996.

TGC Detroit v. City of Dearborn, 206 F.3d 618 (6th Cir. 2000): Telecommunications provider brought action against city alleging that city's requirement that provider pay city a franchise fee for privilege of laying fiber optic cable within city limits violated the Federal Telecommunications Act, and alleging that city discriminated in favor of existing provider. The city then brought a third-party claim against the incumbent provider after it refused to pay franchise fee demanded by city. The court of appeals held that: (1) the Act implies a private right of action for alleged barrier-to-entry injury; (2) the franchise fee (4% gross receipt and a \$50,000 initial payment) assessed against proposed provider was fair and reasonable and was nondiscriminatory; and (3) the original franchise obtained by incumbent provider's predecessor precluded the city's assessment of franchise fee against that provider.

Resources

GST Tucson Lightwave, Inc. v. City of Tucson, 950 F. Supp. 968 (D. Ariz. 1996): Section 253(c) does not grant GST Tucson Lightwave, Inc. a private right of action against the City of Tucson.

AT&T Communications of the Southwest, Inc. v. City of Austin, 975 F. Supp. 928 (W.D. Tex. 1997), vacated at moot, 235 F.3d 241, (5th Cir. 2000): District court held that 253 does not grant FCC exclusive jurisdiction over AT&T's challenge to local ordinance which requires a telecommunications operator to obtain consent from local government before offering telecommunications services. Court rejects notion that a provider that does not install or own facilities in the city's rights-of-way is "using" the rights-of-way. In a subsequent related proceeding, court issues permanent injunction against enforcement of city's ordinance with respect to AT&T. The Fifth Circuit subsequently vacated this decision as moot.

City of Chattanooga v. BellSouth Communications, 1 F. Supp.2d 809 (E.D. Tenn. 1998): BellSouth claimed that City's franchise fee was a tax and violated Section 253. Court determined that federal law prevented it from considering state law tax claim. Court concluded that state court had jurisdiction over the tax claim and concurrent jurisdiction over Section 253 claim. Court remanded matter to state court. On remand, the state trial court granted a motion for summary judgment in favor of BellSouth, and the Court of Appeals of Tennessee affirmed on state law grounds. See *City of Chattanooga v. BellSouth Communications*, No. El 999-01 573-COA-R3 -CV, 2000 WL 122199 (Tenn. Ct. App. Jan. 26, 2000). The court of appeals held that a franchise fee based upon a percentage of gross revenue or on a per foot charge is not a tax impermissible under Tennessee law.

AT&T Communications of the Southwest, Inc. v. City of Dallas, 8 F. Supp. 2d 582 (N.D. Tex. 1998), vacated as moot, 243 F. 3d 928, on rehearing, 249 F. 3d 336 (5th Cir. 2001): U.S. District Court upheld Dallas' requirement that AT&T obtain a franchise and pay a reasonable franchise fee based on the use of the city rights-of-way for company's planned use of its existing fiber optic facilities to provide a new service called "AT&T Digital Link." Court held Dallas does not have power under state and federal law to require a comprehensive franchise application, to consider factors such as company's technical and organizational qualifications, or to place conditions on the franchise unrelated to use of the city's rights-of-way. Court noted that Section 253 does not require a city to impose same fee on all providers. In a related case, court granted preliminary injunction against enforcement of city's ordinance

with respect to a telecommunications provider that does not install or own facilities in public rights-of-way. *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 52 F. Supp.2d 756 (N.D. Tex. 1998). The Fifth Circuit subsequently vacated these decisions as moot.

AT&T Communications of the Southwest, Inc. v. City of Dallas, 52 F. Supp.2d 763 (N.D. Tex. 1999). vacated as moot, 243 F. 3d 928, on rehearing, 249 F. 3d 336 (5th Cir. 2001): U.S. District Court awarded AT&T and Teligent, a wireless providers, final declaratory and permanent injunctive relief, holding that Section 253 preempts the city's imposition of franchise requirements. The Fifth Circuit subsequently vacated as moot this decision, except as it applies to the wireless provider Teligent.

BellSouth Telecommunications, Inc. v. Town of Palm Beach, and BellSouth Telecommunications Inc., v. City of Coral Springs, affirmed in part, reversed in part, 252 F. 3d 1169 (11th Cir. 2001): The decision affirms the District Court's judgment in part; reverses in part; and remands to the district judge for further proceedings. The opinion analyzes key provisions of the two rights-of-way ordinances on a section-by-section basis. The opinion finds certain portions of the Coral Springs and Palm Beach ordinances pre-empted by Florida state law Section 337.401, as subsequently enacted by the legislature, as to telecommunications companies only. The balance of the ordinances seem to be upheld under state law. With respect to federal preemption, the court upholds the municipalities' contention that Section 253(c) is a safe harbor and does not create a duty or limitation on municipal authority to regulate uses of municipal rights-of-way. Subsections (b) and (c) were added to the statute to preserve, rather than to limit, state and local government authority. The opinion seems to hold that Section 253(c) creates a private cause of action for preemption only as to management of public rights-of-way; all other causes of action must be brought to the FCC. Accordingly, the court has remanded the cases to the district court to determine, sequentially, whether the provisions of the ordinances held valid under state law are pre-empted by Section 253(a) and, if so, whether they come with- in Section 253(c). The appellate court has pointed to the validation of the right-of-way management pro- visions in its state-law analysis. Rejecting BellSouth's contention, the 11th Circuit directs that district court may not reach the subsection (c) safe harbor without at least a prima facie showing of violation of subsection (a). The 11th Circuit goes on to direct the district court to reconsider the severability issue in light of the appellate court's determination as to pre-emption under state and federal law. The counterclaims by the Cities are remanded for reconsideration in light of the foregoing determinations.

Bell Atlantic-Maryland, Inc., v. Prince George's County, 49 F. Supp.2d 805 (D. Md. 1999), vacated and remanded, 212 F. 3d 863 (4th Cir. 2000): District court held that any process for entry that imposes burdensome requirements on telecommunications companies and vests significant discretion in local governments to grant or deny per- mission to use rights-of-way may have the effect of prohibiting the provision of telecommunications services in violation of Section 253. Also, the court held that local governments may not set franchise fees above a level that is reasonably calculated to compensate for the costs of administering franchise programs and of maintaining and improving public rights-of-way. Finally, the court held that unless a telecommunications company doing business in the county physically impacts the rights-of-way by installing, modifying or removing lines and facilities, it is not "using" the rights-of-way within the meaning of Section 253(c).

Bell Atlantic Maryland, Inc. v. Prince George's County, 212 F.3d 863 (4th Cir. 2000): The court of appeals vacated a district court opinion that had ruled a county rights-of-way management ordinance violated § 253 because the district court had, in violation of binding precedent, decided a federal constitutional issue first without examining the validity of the ordinance under state law.

Iowa Telephone Association v. City of Hawarden, 589 N.W.2d 245 (Iowa 1999): Supreme Court of Iowa held that Section 253(a) does not preempt state law prohibiting political subdivisions in Iowa from offering local telephone service. The Court followed the reasoning of a recent FCC decision, which held that a municipality was not an "entity" within the meaning of Section 253(a). Id. at 252-53 (citing *In re Public Utility Commission of Texas*, Memorandum Opinion and Order, 13 FCC Rcd. 3460 (1997), *aff'd sub nom. City of Abilene v. FCC* 164 F.3d 49, 53 (D.C. Cir. 1999), discussed below). The Court, nonetheless, held that the state law was preempted by Section 541 (b)(3)(B), which precludes a franchising authority from imposing requirements that have the effect of prohibiting the provision of telecommunications service by a cable operator, including a city utility that operates a cable system.

Cablevision of Boston Inc. v. Public Improvement Commission of Boston, 184 F.3d 88 (1st Cir. 1999): Court affirmed district court's denial of Cablevision's motion for preliminary injunction to enjoin the City of Boston from granting any additional or amended permits to use public rights-of-way. Cablevision's motion sought to prevent telecommunications operators from, among other things, using existing cable for new purposes. Court held "competitively neutral" in Section 253(c) imposes, at most, a negative restriction on local authorities' management of rights-of-way. Therefore, Section 253(c) does not require local authorities to purposefully seek out opportunities to encourage competition.

Omnipoint Communications, Inc. v. The Port Authority of New York and New Jersey, No.99 Civ. 0060(BJS), 1999 WL 494120 (S.D.N.Y. July 13, 1999): District court denied wireless communications services provider's motion for a preliminary injunction to mandate that the Port Authority allow installation of antennae at JFK airport and the Lincoln and Holland tunnels. Omnipoint failed to show a clear or substantial likelihood that it would succeed under Section 253 because negotiations regarding the fee for rights-of-way use had not concluded. The court expressly disagreed with the Bell Atlantic district court and held that "fair and reasonable compensation" under §253(c) is not restricted to cost reimbursement. The court found that the proposed terms did not unreasonably discriminate against Omnipoint. Finally, the court held that the Port Authority's objections to installing antennae in the tunnels were permitted management functions under Section 253(c).

BellSouth Telecommunications, Inc. v. City of Orangeburg, 522 S.E.2d 804 (S.C. 1999): rehearing denied: Supreme Court of South Carolina upheld Orangeburg's authority to charge a telecommunications franchise fee of 5% of BellSouth's gross revenue within the city and a one-time administrative fee for BellSouth's use of the city's public rights-of-way. Court held that a franchise fee amounting to a percentage of the telecommunications company's revenue within the city is "not inherently unfair or unreasonable," absent evidence to the contrary. Id. at 808.

RT Communications, Inc. v. FCC, Nos. 98-9541, 98-9542, 201 F.3d 1264 (10th Cir. 2000): Tenth Circuit Court of Appeals upheld an FCC order that preempted pursuant to Section 253 a Wyoming statute granting competition protection to small incumbent providers. See *In re Silver Star Telephone Company, Inc.*, Petition for Preemption and Declaratory Ruling, Memorandum Opinion and Order, 12 FCC Rcd. 15639 (1997). Under the Wyoming statute, competing firms could compete if the incumbent LEC: (1) consented; (2) was unwilling or unable to provide adequate service; (3) failed to protest the concurrent application; (4) had applied for or was providing concurrent service in another exchange; or (5) was providing cable radio or video services. See Wyo. Stat. Ann. 37-15-201(c). Applying a deferential standard of review, court held that FCC's interpretation of "competitively neutral" was proper. Court also held that FCC's complete preemption was "necessary" within the meaning of Section 253(d).

PECO Energy Co. v. Township of Haverford, No. 994766, 1999 WL 1240941 (E.D. Pa. Dec.20, 1999): District court held township's ordinance requiring a franchise agreement for use of rights-of-way violated Sections 253 because the ordinance was not limited to regulation of the public rights-of-way. The ordinance imposed (1) application and hearing fees; (2) annual fees for all cable, "OVS," or telecommunications service providers occupying public rights-of-way; (3) annual per- lineal-foot fees from communications service providers; and (4) franchise and license fees. Because the fees were not specified and the Township Manager had complete discretion to grant or deny a franchise, court found that ordinance did not fall within the "safe harbor" of Section 253(c) and violated Section 253(a).

City of Dallas v. Metropolitan Fiber Systems of Dallas, Inc. No. CIV.A398CV2128R, 2000 WL 198104 (N.D. Tex. Feb.17, 2000): City sued to collect money owed under a franchise agreement and telecommunications providers counterclaimed that the franchise agreement was preempted under Section 253. Court denied telecommunications providers' motion for summary judgment, holding that Section 253 does not preempt franchise agreement. Court distinguished the case at bar from other Section 253 decisions issued by the Northern District of Texas in the three AT&T Communications of the Southwest v. City of Dallas cases, which are discussed above. Unlike the AT&T cases in which city attempted to force new telecommunications providers to enter into franchise agreements after the 1996 Act had been passed, in the instant case, city was attempting to enforce a franchise agreement entered before passage of the 1996 Act. Because providers had voluntarily agreed to the franchise requirements they challenged, the court held that franchise agreement could not have constituted a barrier to entry under Section 253.

City of Sunset Hills v. Southwestern Bell Mobile Systems, No. ED 75748, 1999 WL 1215880 (Mo. Ct. App. Dec.21, 1999): Court upheld city's ordinance that required communications companies to obtain business license and pay annual business license fee per telecommunications antennae maintained in the city. SBMS alleged that the ordinance violated Sections 253 and 332. Court held that ordinance did not prohibit or have the effect of prohibiting the telecommunications company from doing business in the city.

City of Gary v. Indiana Bell Tel. Co., 732 N.E.2d 149 (Ind. 2000): A city imposed a revenue-based fee on all telecommunications city rights-of-way. The fee was to be calculated in one of three assessments of the city's requirements; (2) a percentage of gross to exceed 15%; or (3) a growth factor calculated from provider's revenues multiplied by the previous year's fee. Ameritech sought a declaratory judgment that the city ordinance be declared void as beyond the scope of the city's municipal powers. Ameritech Indiana received summary judgment, and the city appealed. The Indiana Supreme Court held city was entitled to reasonable, non-cost-based compensation until the effective date of a state statute which prevented the city from collecting such a fee.

AT & T of Portland, 216 F.3d 871 (9th Cir. 2000): Local government conditioned approval of cable franchise transfer on an open access agreement. AT&T filed suit. The Ninth Circuit held that Internet access over cable broadband is a telecommunications service under the Communication Act. Therefore, the City of Portland was improperly regulating such service through its cable franchising authority.

MCI Telecommunications Corp. v. Public Service Com'n, 216 F.3d 929 (10th Cir. 2000): The incumbent local exchange carrier sought injunctive and relief against other communications companies, the Utah Public Service Commission, and its individual commissioners, after the UPSC approved certain interconnection agreements. The court determined that § 253 effectively struck down all state-granted

monopolies that had been given to local exchange companies because § 253 prohibits all state statutes and regulations that impede “the ability of any entity to provide any interstate or intrastate telecommunications service.”

Gulf Power Co. v. FCC, 208 F.3d 1263 (11th Cir 2000) (“Gulf II”), reversed and remanded, U.S. (U.S. Jan. 16, 2002): Power companies nationwide filed petitions challenging the FCC’s pole attachment rates, claiming the FCC had no authority to regulate wireless carriers under the 1996 Act. The Eleventh Circuit held the FCC does not have authority to regulate placement of wireless carriers equipment under § 224 of the Pole Attachment Act. The Court also held that the FCC had no authority to regulate pole attachments for internet providers on the basis that internet services were distinct from cable and telecommunications services. Finally, the Court upheld the FCC’s decision not to count dark fibers for purpose of attachment charges as an additional attaching entity. The Supreme Court has reversed this decision.

Gulf Power Co. v. United States, 187 F.3d 1324 (11th Cir. 1999) (“Gulf I”): Several electric utility companies sued the United States and the FCC in federal district court, alleging the pole attachment provisions in the Telecommunications Act of 1996 violated the Fifth Amendment because they caused a taking of the utility companies’ property without ensuring just compensation. Affirming summary judgment for the defendants, the Eleventh Circuit concluded that the Act did not deny the utilities an adequate process, but instead provides a constitutionally adequate process for ensuring utility companies receive just compensation.

New Jersey Payphone Association, Inc. v. Town of West New York, 2001 U.S. Dist. LEXIS 2478 (D.N.J., March 7, 2001): The court preempted ordinance of the Town of West New York, New Jersey establishing an exclusive franchise for the placement of payphones in the public rights-of-way and obtaining compensation as a percentage of the providers’ gross revenues. The court found the exclusive franchise was a “barrier to entry” in violation of Section 253(a), and rejected the claim that the “compensation” method was reasonable. The court held that “fair and reasonable compensation” is limited to “recoupment of costs directly incurred through the use of the public rights-of-way.” In declining to follow White Plains, Omnipoint, and Dearborn, the court stated that “a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.”

FEDERAL COMMUNICATIONS COMMISSION ACTIONS

In re Classic Telephone Inc.: Petition for Preemption of Local Entry Barriers Pursuant to 47 U.S.C. 253(d), Memorandum Opinion and Order, 11 FCC Rcd. 13,082 (1996), appeal filed sub nom. City of Boque. Kansas v. FCC, No.96-1432, 1997 WL 68331 (D.C. Cir. Jan.14, 1997) (holding appeal in abeyance pending Commission action): FCC clarified that to the extent authorized under state law, local governments have authority to require franchises from telecommunications service providers and exercise authority pursuant to Section 253(b); FCC concluded that manner in which certain franchise requirements were implemented by the cities in the Classic case was preempted by Section 253(a).

In re California Payphone Association Petition, Memorandum Opinion and Order, 12 FCC Rcd. 14,191 (1997): Commission dismissed Section 253 challenge to city ordinance which prohibited payphones on private property in business district unless located completely within an enclosed leasable building and more than ten feet from any pedestrian opening into a building.

In re TCI Cablevision of Oakland County, Inc.: Petition for Declaratory Ruling. Preemption and

Other Relief, Memorandum Opinion and Order, 12 FCC Rcd. 21,396 (1997), partial recons. denied, Order of Reconsideration, 13 FCC Rcd. 16,400 (1998): FCC held that City of Troy, Michigan placed a telecommunications condition on its grant of cable permits in violation of Title VI. FCC declined to preempt local ordinance pursuant to Section 253.

In re Public Utility Commission of Texas, Memorandum Opinion and Order, 13 FCC Rcd. 3460 (1997) review denied sub nom. City of Abilene v. FCC 164 F.3d 49 (D.C. Cir. 1999): FCC did not preempt enforcement of a state statutory prohibition on provision of telecommunications services by a municipality. FCC held that municipalities are not separate entities from a state for purposes of applying Section 253(a).

In re Chibardun Telephone Coop. Petition for Preemption Pursuant to Section 253 of the Communications Act of 1934, Order, 13 FCC Rcd. 9504 (1998): FCC terminated preemption proceeding after Chibardun submitted a withdrawal letter dated May 7, 1998. Chibardun had claimed that City of Rice Lake, Wisconsin violated Section 253 by: (a) refusing to grant excavation permits for construction of telecommunications facilities; and (b) imposing anti-competitive and discriminatory rights of way requirements and fees on entities seeking to compete in local telecommunications market. City's subsequent grant of permits rendered Chibardun's petition moot.

In re Petition for Declaratory Ruling of the Cellular Telecommunications Industry Association, Public Notice, 12 FCC Rcd. 11,795 (1997): Commission tentatively concluded that unlimited moratoria on the siting of wireless telecommunications facilities may constitute an impermissible barrier into local telecommunications market; Commission indicated that Section 253 does not preempt necessarily moratoria of short and fixed terms. Subsequently, the Commission's Local and State Government Advisory Committee and organizations representing the wireless telecommunications industry reached an agreement which (1) establishes guidelines for facilities siting implementation; and (2) adopts an informal dispute resolution process. As a result of this agreement, CTIA withdrew its petition. Agreement of FCC Local and State Government Advisory Committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association and the American Mobile Telecommunications Association, 1998 WL 442941 (Aug. 5, 1998).

Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act, Public Notice, 13 FCC Rcd. 22,970 (1998): The FCC issued suggested guidelines to assist petitioners in filing for Commission relief pursuant to Section 253. The Public Notice contains background on Section 253, suggested content of petitions and replies, time frame for proceedings, and procedural filing requirements.

In re Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way, CC Dkt No.981, 1999 WL1244016 (Dec.23, 1999): Minnesota sought a declaratory ruling that its plan to grant a provider of wholesale fiber optic transport capacity exclusive access to State freeway rights does not violate Section 253 because proposal requires provider, on a competitively neutral and nondiscriminatory basis, to (1) install fiber capacity owned by third parties and (2) make capacity of its own system available through purchase and/or lease to all interested telecommunications service providers. FCC declined to endorse the agreement because the exclusive nature of the agreement may have the effect of prohibiting the provision of a telecommunications service. FCC held that Section 253 applied to the agreement but declined to preempt Minnesota's authority to grant the exclusive rights.

Instead, FCC concluded that the provider's implementation of the agreement might mitigate the FCC's anti-competitive concerns. FCC thus warned that it would scrutinize the agreement's implementation in considering subsequent preemption petitions.

In re Pittencrieff Communications, 13 FCC Rcd 1735 (1997), *pet. for review denied sub nom.*

CTIA v. FCC, 168 F. 3d 1332 (D.C. Cir. 1999): FCC ruled that gross-revenue based fee imposed on wire- less carriers by State of Texas did not violate §253 because carriers made no showing that fee had the effect of prohibiting their ability to provide service.

ADDITIONAL LITIGATION RESOURCES

Fiber Optic Settlements

<https://fiberopticsettlements.com/>

“This website has been established to provide information regarding class action Settlements involving land next to or under railroad rights of way in 46 states and the District of Columbia where Sprint, Qwest, Level 3 and WilTel Communications have installed Telecommunications Facilities, such as fiber-optic cables.”

Litigation Update: Telecommunications Right-of-Way Challenges Against Electric Utilities (Fall 2004)

<http://www.mwe.com/info/pubs/litigationupdate.pdf>

Competitive Neutrality in Right of Way Regulation: A Case Study in the Consequences of Convergence

<http://www.law.northwestern.edu/faculty/fulltime/speta/papers/CompetitiveNeutrality.pdf>

Cooper White & Cooper: Administrative Law and Regulated Industries, Telecommunications Alerts

<http://www.cwclaw.com/publications/alertList.aspx?practice=77>

National Telecommunications and Information Administration - Reports, Filings and Notices

<http://www.ntia.doc.gov/legacy/reports.html>

Presentation to the League of Oregon Cities 81st Annual Conference (September 2006)

Telecommunications Law Litigation Update: Qwest v. Portland, and

The State Right of Way Management Authority

[http://www.google.com/url?](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.gov-law.com%2Fpublications%2F20060926_pjb_telecom_update.pdf&ei=T9TBUYnOCZS54AOX_4DQDg&usg=AFQjCNGg7udfcmA7xjByFAT07IE-PI-rww&sig2=JJ9uE9ocJFkZctmMIWGPZA&bvm=bv.47883778,d.dmg&cad=rja)

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