



State and Local Rights of Way Success Stories

INTRODUCTION

I. STATE APPROACHES

- A. Timeliness of Process
- B. Fees
- C. Non-Discriminatory Treatment of Providers
- D. Compliance
- E. Involvement of Stakeholders

II. LOCAL SUCCESS STORIES

- A. Involvement of Stakeholders
- B. Information Collection
- C. Timeliness of Processes
- D. Fees
- E. Remediation and Maintenance

CONCLUSION

INTRODUCTION

Rights-of-way management has arisen as a key issue in broadband deployment at the federal, state, and local levels. The steps required for a telephone company to lay new lines on a public street, a cable company to start providing Internet service, or a cell phone company to place antennas on public poles, can have real consequences in the decision to deploy broadband service to a community.

When NTIA conducted a Broadband Forum in October 2001 and received comments in its **broadband deployment proceeding** in 2002, participants and commenters cited rights-of-way issues as having a major impact on broadband deployment. These issues generally fell into four categories: 1) timeliness of processes; 2) fees; 3) information collection; and 4) remediation and maintenance. Broadband providers and government land managers, however, often offered differing viewpoints on each of these issues.

A number of providers, for example, noted that deployment was often slowed by overly burdensome requests for information, lengthy processes for obtaining permits, unreasonable charges for use of the rights-of-way, and undue remediation and maintenance requests. Additionally, several providers noted that the complex patchwork of procedures among localities made installation of facilities across municipal boundaries costly and time-consuming.

At the same time, many cities noted the need for flexibility in regulating the use of public rights-of-way and in assessing and recovering costs to ensure the continued safety of their streets. Additionally, some cities have cited the lack of personnel resources as an underlying reason for potential delays in processing permits or the inability to process them as speedily as companies might like.

At NTIA, we understand that there are valid concerns on all sides, and we believe it is important to recognize the legitimacy of each perspective. Equally important is changing the tenor of the discussion. Rather than reiterating negative stories, we have decided to supply a compendium of “success stories” that can advance the discussion on rights-of-way. These stories are examples shared by industry and/or governments of policies and procedures they believe have succeeded in improving access to rights-of-way. The examples illustrate different mechanisms that can improve the involvement of the stakeholders, streamline the collection of information, improve the timeliness of the application process, ensure that fees are reasonable, and/or improve remediation or maintenance procedures. We highlight these stories in boxes throughout the following discussion.

By listing these success stories, NTIA is not holding out any one model as the right model or “the” best practice. While one process may work well for one locality, it may not necessarily work for others. On the other hand, we believe that these examples may help some stakeholders in their thinking about new ways to address rights-of-way issues. The industry and government contacts provided for each success story also will help stakeholders obtain more information to determine if a particular model would work well in their situation.

We know that there are many examples throughout our nation’s communities that exemplify good practices and procedures, and that this represents a small sample. We hope that this compendium will continue to grow as we receive more success stories over the coming months. Included on this website is a Submission Box through which we hope additional communities and companies will share their successful procedures or policies both at the state and local level.

I. STATE APPROACHES

At the state level, a variety of provisions address rights-of-way access for telecommunications providers. Among other issues, states have addressed permit processing timelines, fee structuring, non-discriminatory treatment of providers, and remediation measures. The variety of state approaches is discussed at length in the National Association of Regulatory Utility Commissioners’ (NARUC’s) July 2002 report, titled **Promoting Broadband Access Through Public Rights-of-Way and Public Lands**, and in NTIA’s new, comprehensive **50-state matrix**, which sets forth all relevant rights-of-way laws within each state. This discussion adds to these resources by highlighting in the boxed text the success stories identified by providers and government officials.

A. Timeliness of Process

States have addressed the timeliness and efficiency of processing rightsof-way permit applications in a number of different ways. For example, many states have established minimum times for local governments to process permit applications. States such as

Kansas, Indiana, and Ohio have prescribed 30-day deadlines for processing permits, while Michigan and Virginia have established 45-day deadlines. As described in NTIA's state matrix, the deadlines vary significantly among states that have addressed this issue. Other states have given other levels of government, such as cities and towns, the discretion to establish deadlines of their own.

In addition to establishing statutory timeframes, some states have also experimented with ways to simplify permit applications on a state-wide basis. For example, the use of model license agreements by state agencies has greatly simplified the registration and permitting process. Such an approach is most typically used by a state agency with jurisdiction over state roads or by a highway authority with jurisdiction over a highway system. Companies that can work with such regional or state authorities benefit from this "one-stop shopping" method. They can work with one authority or use one model contract rather than a multiplicity of localities or contracts in that region. The following success story illustrates the use of model agreements.

State of Colorado

T-Mobile hails as a success the use of Master Lease Agreements by the Departments of Transportation in Colorado, Arizona, Washington, and Minnesota. In the case of Colorado, the Colorado Department of Transportation (CDOT) decided to issue a Master License Agreement for use of its rights-of-way along state highways for wireless facilities. The Preamble to the Agreement notes the benefits to both the State and the carrier. CDOT benefits by improving wireless services along its highway systems and adding to its revenues, while the wireless companies benefit by accessing properties throughout the state (subject to approval through the local zoning process) that could also be adjacent to populated areas but not in the heart of residential areas. Another benefit, expressed by T-Mobile, is one-stop shopping: it only needed to sign one contract and deal with one agency to build sites traversing much of the state.

Contacts:

- [Laura Altschul](mailto:Laura.Altschul@T-Mobile.com), T-Mobile, Laura.Altschul@T-Mobile.com
- [Dave Judy](mailto:dave.judy@dot.state.co.us), Colorado Department of Transportation, dave.judy@dot.state.co.us

State of New York

In the State of New York, T-Mobile also negotiated a master agreement in 1997 with the New York State Thruway Authority to access rights-of-way along the state's 640-mile highway corridor. That agreement arose from a finding that there was no environmental impact from building sites along the state highway. The wireless provider must conduct formal outreach with local officials when a new site is built, but does not need to go through a public zoning process in that locality. Since 1997, T-Mobile has built thirty sites along the New York State Thruway.

Contacts:

- [Laura Altschul](mailto:Laura.Altschul@T-Mobile.com), T-Mobile, Laura.Altschul@T-Mobile.com
- [Gus Lapham](mailto:gus_lapham@thruway.state.ny.us), New York State Thruway Authority, gus_lapham@thruway.state.ny.us

B. Fees

States have also developed a variety of fee structures associated with using the right-of-way. In general, governmental entities follow either (or a combination) of two approaches to assess fees for rights-of-way: cost recovery and rental fees. Cost recovery pertains to charging a fee to recover the actual costs of administering access to rights-of-way. Many states, including Arizona, California, Colorado, Indiana, and Michigan, have limited fees to cost recovery. These states permit municipalities to charge only fees reasonably related to the costs incurred in granting and/or administering the permits and/or in managing the rights-of-way. Several states have actually specified which costs can be recovered through fees. Missouri, for example, allows the recovery of rights-of-way “management costs,” which include costs associated with issuing, processing, and verifying applications; revoking permits; inspecting job sites and restoration projects; protecting or moving the rights-of-way user; and determining the adequacy of restoration.

Other states go beyond cost recovery fees and also charge a fee for using the public land, or a rental fee. A number of states calculate fees as a percentage of gross revenue or fee per linear foot or access line. For example, Idaho establishes that municipalities may levy fees on providers up to three percent of gross revenues as a privilege tax for use of rights-of-way. In Michigan, most rights-of-way users must pay an annual maintenance fee of five cents per linear foot.

Another option – a flat tax – has been adopted by a few states such as Florida, Illinois, and South Carolina. Florida stakeholders, for example, opted for a flat tax (one state and one local tax) to replace the previously complex tax scheme of seven separate state, local, and communications taxes on communications providers, including a state sales and use tax, a state gross receipts tax, a local public service tax, and a local option sales tax. The previous system resulted in different rates and bases for different types of telecommunications services. Florida’s new flat tax, which took effect on October 1, 2001, is based on a percentage of gross local revenues of retail communications service providers that is applied more evenly across all types of telecommunications providers. (Further information on the development of this law can be found in the boxed text below.) Under the new law, Florida municipalities are barred from applying franchise and/or license fees, but in return receive a proportionate share of the tax revenue.

State of Florida

The process leading to Florida’s new flat tax and Model Ordinance has been called a “success story” by many of the stakeholders involved. Restructuring of the complex tax system was initiated by then-Governor Lawton Chiles, who created the Florida Telecommunications Task Force in 1995. The Florida Telecommunications Industry Association (FTIA), composed of 34 corporations, formed a Tax Work Group to assist in developing recommendations. FTIA sought the contributions of the Florida League of Cities, the Florida Association of Counties, and the Florida Cable Telecommunications

Industry Association. The end result was compromise legislation to simplify taxation of communications services and a Model Ordinance that satisfied many of the goals of both public and private stakeholders. The new legislation replaced multiple layers of taxation and differing franchise fees with one state and local tax administered by the state.

The flat tax has the following benefits. Payment of two taxes, rather than seven, results in fewer returns, payments, and audits – a benefit to providers and government entities alike. Additionally, the new flat tax benefits providers by lowering the overall tax rate. At the same time, because the flat tax applies to wireless, cable, and satellite providers, as well as wireline carriers, the new tax system has a broader base than the previous taxation structure and therefore assures tax neutrality and a higher tax revenue base. Finally, the flat tax system replaces the franchise and permit fees for use of rights-of-way, many of which were seen to be excessive. The new tax structure, however, ensures revenue stability for municipalities by providing for the redistribution of tax revenues to municipalities in lieu of permit fees.

Contacts:

- [Dorian Denburg](#), BellSouth, Dorian.Denburg@BellSouth.com
- [Susan Langston](#), Executive Director, Florida Telecommunications Industry Association, SusanLangston@Earthlink.net
- [Kraig Conn](#), Florida League of Cities, kconn@flcities.com
- [Sarah Bleakley](#), Florida Association of Counties, sbleakley@ngn-tally.com

C. Non-Discriminatory Treatment of Providers

States have also addressed ways to treat different types of providers in a non-discriminatory manner. One issue that repeatedly arises for wireless providers, for example, is whether they have access to rights-of-way on the same basis as other types of providers that lay in-ground lines. As NARUC's report notes, Illinois and Florida have included wireless providers in their non-discriminatory, broad-based tax schemes. This contrasts with other states, such as Virginia, that have explicitly excluded commercial mobile radio service providers from paying fees.

State of Washington

Wireless providers point to states such as Washington as success stories because they explicitly direct municipalities to allow wireless facilities into the rights-of-way. Washington passed a law three years ago that allows the regulation, but not the prohibition, of wireless or wireline facilities in a town or a town's rights of way. (An exception was made for towns smaller than five square miles in size.) Washington's state law further provides that if the city or town and wireless provider are unable to agree on a fee, the parties must submit the issue to binding arbitration.

Contact:

- [Laura Altschul](#), T-Mobile, Laura.Altschul@T-Mobile.com

D. Compliance

NTIA's [50-state matrix](#) also provides information on other rights-of-way provisions across the 50 states, including directives regarding remediation and maintenance of rights-of-way; the authority to condemn or exercise eminent domain; and any terms regarding, appeal, arbitration or mediation in the event of a dispute. For example, states such as California, Delaware, and Missouri require providers to restore the street surface to its pre-existing condition. Some states authorize delay penalties for unreasonable delay in right-of-way excavation, patching, or restoration, or permit the municipality to restore the street and charge the company subsequently. There are also statutory provisions regarding compensation required for condemnation of land for rights-of-way uses. Finally, a number of states have established mediation or arbitration procedures to resolve conflicts between carriers and local governments. NTIA has yet to receive a success story on compliance and is actively seeking contributions in this area.

E. Involvement of Stakeholders

A final, significant lesson is that the development of new rights-of-way laws or regulations benefits from early involvement of all stakeholders in the decision-making process. Rights-of-way issues are highly complex, and there can be many parties with diverging interests affected by rules or regulations concerning rights-of-way. Some states and localities have found, therefore, that early input by affected stakeholders can help shape a more workable, mutually agreeable resolution. The stakeholders involved in the process come to understand each other's positions and may be more likely to reach a mutual understanding that results in an effective rule or decision. The following success story illustrates that lesson.

State of New Jersey

The New Jersey Department of Environmental Protection (NJDEP) decided to bring in all affected stakeholders in developing more detailed rules for the installation of submarine telecommunication cables. Most of the practical questions that NJDEP faced in responding to these applications for installing submarine cables had to do with possible conflicts between such cables and the interests of commercial fishing operations using gear that scrapes or digs into the seabed. After dealing with these questions in an ad hoc fashion in the context of several cable projects, NJDEP decided to establish rules of general applicability that would strike a balance among competing interests. To that end, NJDEP invited representatives of the cable industry, the commercial fishing industry, and relevant state and federal agencies to participate in a Submarine Cable Task Force. The Task Force met approximately monthly over most of a year. Through this process the Task Force eventually hammered out the text of the proposed rule, which was formally published on January 7, 2002 and adopted as final on February 3, 2003. During this process, both the cable companies and the fishing interests began to better understand each other's interests and reached overall agreement on a number of elements in the final rule.

Contacts:

- [Paul E. Shorb](#), AT&T, pshorb@att.com
- [Ruth Ehinger](#), State of New Jersey, ruth.ehinger@dep.state.nj.us

Lessons from the state level abound. The 50-state matrix can direct readers to other types of statutory provisions, and we hope that our list of anecdotal successes will continue to grow as we receive further input from government and industry.

II. LOCAL SUCCESS STORIES

As extensive as the state provisions may be, much of the decision-making regarding rights-of-way occurs at the local level. Municipalities often address issues of permitting, street cuts, and remediation using their authority to regulate rights-of-way access and to protect the health and safety of their residents and public property. A variety of different approaches and successes have arisen at the local level, reflecting the different needs of cities and towns across the Nation.

A. Involvement of Stakeholders

As at the state level, the involvement of affected stakeholders plays a significant role at the local level. Involving stakeholders in local processes may be even more critical because local governments directly govern the use of rights-of-way through local ordinances and ongoing regulation and oversight. Both carriers and local governments, therefore, have shared success stories relating to the involvement of affected parties in the ordinance-drafting process as well as the subsequent planning stages.

1. Involving Stakeholders in the Ordinance Drafting Process

Many cities have involved industry in the process of drafting rights-of-way ordinances. Allowing for such input has enabled all stakeholders to understand each other's needs and concerns at the outset, resulting in more workable ordinances for industry and government alike. The cities of Plano, Texas, and Beverly Hills, California both involved rights-of-way users in crafting their ordinances. Both cities gave industry the opportunity to comment on a draft rights-of-way ordinance.

City of Plano

The City of Plano conducted a multi-tiered process, first holding a workshop to review the draft ordinance. This was followed by a period during which companies could file written comments on the ordinance. Finally, the City of Plano met with individual companies to work through any remaining concerns. This process resulted in several provisions that addressed the carriers' concerns. For example, the City agreed that emergency and maintenance permits could be faxed or emailed (and the City typically responds to these in two or three days). The City also crafted a records provision to address carriers' concerns. Rather than requiring "as built" plans of all existing facilities, the City of Plano agreed that carriers need only mark the major streets where their facilities currently exist and that such records would remain confidential.

Contact:

- [Deputy Mayor Steve Stovall](#), City of Plano, Texas, sstovall@plano.gov

City of Beverly Hills

A similar consultative process in Beverly Hills resulted in a mutually agreeable ordinance as well. By holding a comment period on the draft ordinance, the City learned what industry planned for its buildout, methods of construction, and construction standards. The opportunity for dialogue also gave industry an understanding of the City's needs in managing rights-of-way.

Contact:

- [Sandy Sakamoto](#), Pacific Telesis Group Legal Department, sandy.sakamoto@sbc.com

2. Involving Stakeholders in Subsequent Planning

The involvement of rights-of-way stakeholders may also be critical throughout subsequent planning for use of the rights-of-way. As a result, a number of cities have developed methods to involve telecommunications providers in their ongoing planning process, such as by holding regular meetings or requiring written submissions for upcoming plans.

City of Plano

The City of Plano holds quarterly Utility Coordination Meetings to discuss projects being undertaken in rights-of-way with companies currently in that space. During these meetings, companies learn what projects are starting or ongoing and what may be required of them as rights-of-way users. The District of Columbia holds two different monthly meetings with utilities using the rights-of-way: a Utility Policy Meeting to discuss general policy issues that may affect those with permits in the rights-of-way, as well as a Street Coordination Meeting to compare plans for the Department of Transportation's capital improvements with those being undertaken by utility providers.

Contact:

- [Deputy Mayor Steve Stovall](#), City of Plano, Texas, sstovall@plano.gov

City of Eugene

The City of Eugene, Oregon also hosts bi-monthly utility coordination meetings between staff and local rights-of-way users. By bringing together city staff with local providers, these meetings have resulted in simple, cost-cutting solutions. At one such meeting, for example, the first utility in an area agreed to install sleeves under major facilities so

subsequent utilities did not then have to bypass existing facilities and enter a more congested or less accessible space.

Contact:

- [Damon Joyner](#), Utility Permit and Inspections Supervisor, City of Eugene, Oregon, damon.d.joyner@ci.eugene.or.us

District of Columbia

While regular meetings help coordinate rights-of-way uses, the District of Columbia also requires that plans be submitted in writing. Occupancy Permit holders must submit an updated “Two Year Plan” twice a year so that the District’s Department of Transportation knows where future construction may take place. While the District of Columbia does not have a comprehensive record of the underground infrastructure installed in previous decades, the new plans are helping the City to put together a forward-looking map of all underground lines and pipes. These plans are kept confidential. However, in a meeting held with each company after the plan is filed, District officials let a company know whether it has overlapping plans with other carriers so that they can coordinate street cuts and share expenses.

Contact:

- [Denise Wiktor](#), District of Columbia Department of Transportation, denise.wiktor@dc.gov

B. Information Collection

Another area where success stories can provide useful models is information collection prior to obtaining a permit or registration. Companies trying to access rights-of-way have raised several concerns with the amount and manner in which such information is collected. Many have noted that some localities collect an excess of information that is often unrelated to rights-of-way management. Additionally, some providers have expressed concern about the diverse requirements for permit applications among municipalities. This patchwork of varying requirements can make the application process costly and difficult for providers putting in facilities in multiple jurisdictions or across municipal boundaries. The experiences of localities set forth below illustrate how information collection can be streamlined and standardized to save time and reduce costs for both industry and municipalities.

1. *Simplifying Information Collection*

Some cities have set forth very clear and easy-to-follow requirements for the registration and permit applications in order to simplify the information collection process. The registration application is typically required of all providers that use, or plan to use, the public rights-of-way. Once registered, a provider can then apply for a permit to install

facilities in a particular right-of-way. Simplifying information collection in either part of this process can greatly assist providers trying to install facilities in public rights-of-way.

City of Jacksonville Beach

The City of [Jacksonville Beach, Florida Ordinance](#) offers one method of simplifying the collection process. The City has adopted a succinct, clear registration process based on the Florida Model Ordinance, discussed below. The registration requires a name, address, phone number, evidence of insurance coverage, and the applicant's certificate of authorization or license issued by the Florida Public Service Commission, or other federal or state authority with jurisdiction. These registration requirements focus on collecting information that is relevant and useful to a locality managing rights-of-way.

Contacts:

- [Dorian Denburg](#), BellSouth, Dorian.Denburg@BellSouth.com
- [George Forbes](#), City Manager, Jacksonville Beach, Florida, citymgroffice@jaxbchfl.net

2. Model Ordinances

The model ordinance approach has been adopted in numerous locales, such as the state of Florida and the Denver metropolitan area. The creation of a model ordinance gives municipalities a template to follow on rights-of-way processes and makes it more likely that neighboring localities will adopt similar procedures. Such an approach generally helps standardize information collection, making it easier for companies to predict what information will be collected in a permit application.

State of Florida

As noted above in the discussion of state laws, the [Florida Model Ordinance](#) was developed after passage of the new legislation through the efforts of the Florida Telecommunications Industry Association, the Florida League of Cities, and the Florida Association of Counties. These groups saw a model ordinance as a good vehicle to ensure that local codes complied with the new law. Once the registration is approved, the carrier must then file a permit application to conduct specific installations. Providers have noted that the permit application is relatively easy for them to complete because it requires a "plan" for the location of the proposed installation of facilities, rather than an "as built" map. The latter consists of horizontal and vertical locates for all facilities laid in ground, which can be very costly for companies to conduct.

Contacts:

- Dorian Denburg, BellSouth, Dorian.Denburg@BellSouth.com
- Susan Langston, Executive Director, Florida Telecommunications Industry Association, SusanLangston@Earthlink.net
- Kraig Conn, Florida League of Cities, kconn@flcities.com

- Sarah Bleakley, Florida Association of Counties, sbleakley@ngn-tally.com

Greater Denver Area

Using a standardized ordinance benefits not only companies, but also municipalities. Twenty-eight cities and counties around Denver founded an inter-city consortium, called the [Greater Metropolitan Telecommunications Consortium \(GMTC\)](#), to address collectively issues of common interest. One of these issues concerned rights-of-way access and pricing structures. GMTC members found benefit in developing a [Model Ordinance](#) to address pricing and other issues facing these governmental entities. By examining these issues collectively, the GMTC municipalities pooled resources and expertise and developed a model ordinance that many GMTC members have adopted as their own municipal ordinance.

Contact:

- Mayor Ken Fellman, City of Arvada, kfellman@kandf.com

C. Timeliness of Processes

Another category of success stories concerns the timing of the process itself. As noted above, some companies have cited slow, cumbersome permit processes as factors that can impede broadband deployment. In many locales, however, rules and procedures have been crafted to ensure timely and appropriate action on rights-of-way permitting. The examples below show how different procedures can accommodate faster entry of broadband providers.

1. Speeding Up the Permitting Process

Many localities have recognized the need for a faster turnaround time between the initial filing of an application to obtain access to a right-of-way and the final installation of the facilities. To reduce installation time, some cities have imposed tight deadlines for approving or denying registrations. Other cities have authorized blanket permits, eliminating the need to require registration for each separate installation of facilities. Steps like these help companies gain faster access to rights-of-way.

City of Jacksonville Beach

The City of Jacksonville Beach, Florida is one of many cities that have established steps to facilitate the permitting process. First, the [Jacksonville Beach Ordinance](#), closely modeled on the Florida Model Ordinance, sets forth very clear, straight-forward registration requirements. As discussed above, the simplicity of these requirements cuts down on the time for carriers in collecting information. Second, the Ordinance provides for a quick turnaround once the registration is received. The City has thirty days to approve or deny registrations to access rights-of-way. Imposing such a deadline reduces the time before

which providers can then apply for a permit.

Contacts:

- [Dorian Denburg](#), BellSouth, Dorian.Denburg@BellSouth.com
- [George Forbes](#), City Manager, Jacksonville Beach, Florida, citymgroffice@jaxbchfl.net

2. Streamlining Permitting Processes

In addition to reducing the amount of time required for the application process, some cities have adopted other methods to facilitate access to rights-of-way for new entrants. The examples below describe new approaches to reduce administrative burdens on carriers that are adding new services in the rights-of-way, such as cable providers and wireless carriers.

City of Omaha

In Omaha, Nebraska, Cox Cable was able to introduce competitive phone service and high-speed Internet access without going through new rights-of-way permitting. The City's regulators did not require Cox to get a new "telecommunications service" permit or additional franchise to install phone/Internet service. Instead, the regulators relied on the existing permitting processes established through the cable franchise, which already addressed rights-of-way issues. According to Cox, the regulators promptly issued new construction permits for the upgrades to the system. The same speedy permitting process was also applied to Cox's competitor, Qwest, which was rolling out new data, voice, and video services in direct competition.

Contact:

- [Alexandra Wilson](#), Cox Cable, Alexandra.Wilson@cox.com

Cities in the State of California

Wireless providers typically find themselves in a different situation from other providers with respect to rights-of-way access. They are often excluded from the general municipal rights-of-way ordinance and subject to other rules. Additionally, service quality is dependent on access to rights-of-way across residential and non-residential neighborhoods, yet access often can be difficult to obtain. Typically, for example, the siting of wireless facilities in a right-of-way is subject to a conditional use permit process, which involves environmental and design evaluations. Approval of a conditional use permit can take up to two years.

Several cities in California, however, have interpreted the California Public Utilities Code to provide for administrative encroachment permits, rather than conditional use permits, for wireless siting. Cities such as Los Angeles, Ocean Side, La Mesa, and Silana Beach recently allowed Sprint PCS to apply for an administrative encroachment permit (or above

ground facilities permit) in order to place their towers in local rights-of-way. The administrative process involves a public hearing, allowing community and environmental input, and an administrative determination, but eliminates the need for an environmental and design evaluation. As a result, the approval for such a permit can take approximately one month rather than two years.

Contacts:

- [Roger Sherman](mailto:rhsherm01@sprintspectrum.com), Sprint PCS, rhsherm01@sprintspectrum.com

In California:

- [Larry Doherty](mailto:lidoher01@sprintspectrum.com), Sprint PCS, lidoher01@sprintspectrum.com
- [Stella Acuna](mailto:sacuna01@sprintspectrum.com), Sprint PCS, sacuna01@sprintspectrum.com
- [Julie Allen](mailto:jallen@eng.lacity.org), Department of Public Works, City of Los Angeles, jallen@eng.lacity.org

D. Fees

As at the state level, there are often disputes between local governments and providers about the appropriate fee structure. Providers typically favor basing rights-of-way fees on cost recovery, i.e., basing fees on costs directly related to the administration of the rights-of-way. Municipalities, on the other hand, tend to prefer fees that are comparable to a rental fee for use of the rights-of-way or that cover a broader array of costs, such as road degradation.

While many states have addressed this issue in recent years, there is still much latitude at the local level for unique approaches. Not surprisingly, cities with lower annual fees receive strong praise from rights-of-way users. Other municipalities have developed approaches that allow providers to substitute other services for fees, or for partial payment of fees.

City of Beverly Hills

The City of Beverly Hills developed a creative and mutually agreeable resolution for fee payment. In this case, Sprint was interested in placing new antennae throughout the City. The City appeared reluctant to allow placement of these antennae in existing public rights-of-way, however, and Sprint believed the proposed rents for using these rights-of-way were extremely high. Instead, Sprint proposed a unique public-private partnership. The City needed new street lights in certain areas. Sprint agreed to install the new lights in return for permission to place their antennae on top of the lights and paying the City a nominal fee for maintaining these antennae.

Contacts:

- [Roger Sherman](mailto:rhsherm01@sprintspectrum.com), Sprint, rhsherm01@sprintspectrum.com
- [Shana Epstein](mailto:sepstein@ci.beverly-hills.ca.us), City of Beverly Hills, sepstein@ci.beverly-hills.ca.us

E. Remediation and Maintenance

Once the installation of facilities has taken place, the restoration of rights-of-way raises another set of concerns for both cities and carriers. The issues of remediation and

maintenance involve questions such as the time in which carriers must restore the right-of-way after installing new facilities; the condition to which the right-of-way must be restored; the period of time such restoration must be guaranteed; and how cities can monitor the work being done.

At this phase, cities are eager to have such work done swiftly to ensure that streets are returned to a safe and usable condition as soon as possible. Carriers, meanwhile, need sufficient time to conduct such repairs and are concerned that restoration requirements might impose unreasonable burdens or expectations. The success stories provided below strike a reasonable balance between the cities' and providers' interests. They also offer innovative methods to review that repair and maintenance is successfully completed.

City of Jacksonville

The City of Jacksonville Ordinance again establishes a tight, but reasonable, deadline for this phase of the installation. The Registrant is required to restore the right-of-way to its original condition within thirty days from the placement of the Registrant's facilities. If the carrier fails to complete that work within thirty days, the City can perform the restoration and charge the total costs to the Registrant. The affected carriers have considered this time period to be reasonable. (They have voiced objections, however, to Ordinance language that requires the carrier to restore the rights-of-way to the original "or superior to the original condition," on the basis that they should not be responsible for improving the streets beyond the pre-existing conditions.) In addition, carriers have found troublesome the requirement that the Registrant must guarantee restoration for the next twelve months because they fear they might be held responsible for damage caused by a subsequent registrant.

Contacts:

- [Dorian Denburg](#), BellSouth, Dorian.Denburg@BellSouth.com
- [George Forbes](#), City Manager, Jacksonville Beach, Florida, citymgroffice@jaxbchfl.net

District of Columbia

Another aspect of remediation and maintenance is ensuring that this repair work is completed satisfactorily. The District of Columbia has addressed this issue through several innovative measures. First, it requires that the rights-of-way user post large public notices next to each construction site. These notices are 5' by 7' double-sided metal signs that include the name of the permittee, a contact person and telephone number, the duration of work, and the start and end date of the work. The sign must be posted at least five calendar days prior to the beginning of the installation. The permittee is also required to notify in writing all affected property owners or building managers that will be affected by the construction. These measures enable the public to see which company is doing the construction and to contact that company if there are any problems. The notice also contains an emergency number in the District of Columbia in case problems arise.

The District of Columbia has also put in place a Neighborhood Infrastructure Maintenance Organization (NIMO) of thirty employees to inspect construction and remediation activities. These employees travel through their designated areas on a daily basis to inspect street excavations and restorations. This gives them first-hand knowledge that carriers are complying with their permits and proper remediation procedures. Along the way, NIMO employees are also able to address other neighborhood concerns or violations.

Contact:

- [Denise Wiktor](#), District of Columbia Department of Transportation, denise.wiktor@dc.gov

CONCLUSION

The above stories are some of the many ways that carriers and governments have successfully resolved issues relating to rights-of-way. Obviously, not every example will apply to every type of carrier or work well for every state or municipality. These examples, however, are intended to provide a resource for governments and carriers that are seeking better solutions. They demonstrate that the best solutions at the local level emerge through dialogue and continuing discussions among all stakeholders in the rights-of-way debate. They also demonstrate that mutually agreeable solutions can arise when the parties are willing to try a novel approach.

We hope that readers will continue to provide NTIA with further examples by submitting new “success stories” through our website so that this document can evolve as new ideas and new models emerge.