

NATOA'S ANNUAL CONFERENCE

Lake Buena Vista Palace

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Hidden Treasures

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Use of Public Property

- Ownership and Control a function of State law
- Many municipalities own their ROW in fee
- In some states ROW held in trust for public
- Still others have an easement over property owned by another

Public Property Does Not Mean Free

- US v 50 Acres of Land – Fifth Amendment just compensation for taking of property applies to public land
 - But, as creature of state the state action against municipal property may be valid
- In some states ROW held in trust for public
 - Many states limit the ability to give away public property without adequate compensation
- City of Dallas v . FCC -- franchise fees not a tax but a form of rent
- This is consistent with view of ROW as property

Public Safety

- ROW has an important public safety component
- Historically ROW agreements have often included in-kind public safety components such as pole and fire call boxes/lines
- Why shouldn't modern agreements include similar features such as dedicated capacity for public safety

Federal Pole Attachment Regulations

- Regulate rates, terms and conditions of access for utility pole attachments by telecommunications carriers and cable operators
- “The term ‘pole attachment’ means any attachment by a **cable television system or provider of telecommunications service** to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4)
- Includes wireless attachments but does not include stand alone information services such as Internet access.
- Gulf Power case indicates that it is status of provider not service that triggers obligation

Municipal Exemption -- “Utility”

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The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. **Such term does not include...any person owned by...any State.”**

“The term "State" means any State . . . **or any political subdivision, agency, or instrumentality thereof.”**

47 U.S.C. §§ 224(a)(1), (a)(3).

Implications of the Municipal Exemption

- Municipals are not subject to federal access rules
- Municipals are not subject to federal rate requirements, including distinctions among providers
- Municipals are not subject to federal procedural requirements

If Exempt, Why Should Municipalities Care About Federal Requirements?

- The municipal exemption could be limited by Section 253
- Some states have adopted federal standards e.g. Texas, Colorado
- Federal standards are often invoked as benchmarks
- Municipal rates are often below rates that federal standards would justify
- Municipal telecommunications providers have rights as attachers

MUNI WIFI and Pole Attachments

- Key issue in muni WiFi projects is often obtaining access to poles/light stands
- If poles not owned by municipality how is access obtained?
- WiFi generally utilized to offer information services and therefore federal pole attachment rates are not available but there may be ways to work around this issue