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**Broadband and Local Strategy Planning, Competition  
and Technological Developments Necessitating  
Changes In Rights-of-Way Controls**

Adrian E. Herbst

The Baller Herbst Law Group

301 Fourth Avenue South, Suite 377N

Minneapolis, MN 55415

(612) 339-2018

[AHerbst@Baller.com](mailto:AHerbst@Baller.com)

[www.Baller.com](http://www.Baller.com)

# Overview

What this presentation is about. This presentation is about change, communication services, local needs, and requiring a fresh look by local governments into the management and control of communication services, rights-of-way, and other areas requiring local oversight.

# Overview

- The end result of this review will be to present the concept of a modern approach to city ordinance(s) to include:
  - Services, including cable and telecommunications
  - Wired and wireless
  - Construction of communications systems in rights-of-way and other areas of city

# What Are The Drivers

- Competition
- Technological change
- Changing local legal and regulatory authority
- Broadband

# Competition

- Cable operators and telephone companies are engaging in each others service areas
- Broadband (voice, video, and data) triple play mean greater revenue potential that will attract overbuilding or new forms of technology and services
- New and changing types of service providers

# Competition

Competition and new technologies will create greater and more intensive use of rights-of-way by multiple users. This, in turn, will require more intensive rights-of-way management and controls to enable orderly use, public safety, reliable availability of needed services, and fair and reasonable treatment of all users.

# Technological Change

- Fiber optics, fiber to the home
- Wireless, Wi-Fi, Wi-Max
- Equipment and facilities
- Size, location and placement becoming of increasing concern to local governments
- Is there enough room?
- How will local governments deal with problems of public use vs. private use?
- Public nuisance and public safety
- Aesthetic considerations



Columbia Telecommunications Corporation





Columbia Telecommunications Corporation



Columbia Telecommunications Corporation



City of Wauwatosa, Wisconsin



City of Wauwatosa, Wisconsin



# Issues With Current Ordinances and Franchise Agreements

## A. Incumbent operators:

- Area served
- Build-out (mandatory)
- Level playing field
- Financial commitments
- Unwilling to interconnect
- Competitive Equity

# Issues With Current Ordinances and Franchise Agreements

## B. Competitors:

- City requirements antiquated
- Delay in city process
- Build-out favors incumbents
- City hall disorganization
- Burden to entry contrary to Telecom Act
- Claims new service like AT&T not a cable service

# Legal Developments

- Cable service
- Generally local authority
  - Cable Act of 1984
  - Cable Consumer Protection and Competition Act of 1982
  - Telecommunications Act of 1996
  - FCC Franchising Orders
- Telecommunications
  - Generally state control



# Recent Developments (Cable Service/IP Video)

- State legislation (changing local authority)
  - Leading with Texas in 2005
  - Current State of State Legislation
    - There are 18 states that have adopted changing laws applicable to local regulation vs. state regulation of cable services
    - Varying rights on the part of local government to franchise, require community benefits and compensation
    - Generally, preservation of local right-of-way control is not altered

# Recent Developments (Cable Service/IP Video)

- FCC cable franchising orders
  - Applications and timeline
  - Build-out – reasonable vs. unreasonable
  - Financial
  - Rights-of-way control

# Recent Developments (Cable Service/IP Video)

- IP video service – if it walks like a duck...
  - ATT maintains that its service is not a cable service and therefore not subject to local franchising
  - “Cable service“ is "(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6).

## Recent Developments (Cable Service/IP Video)

- IP video service – if it walks like a duck...
  - *New England Cable and Telecommunications Association v. Southern New England Telephone*, Federal District Court New Haven, CT, (July 2007) held that ATT's U-Verse offering is a cable service, upheld (July 2008).
  - Connecticut Department of Public Utilities – AT&T equipment issues – supports city control over placement in right-of-way (final 9/29/08)

# Community Broadband: May Be The Real Driver of Public and Private System Development

- Economic development
- Educational and occupational opportunity
- Public safety and homeland security
- Digital equity
- Local, regional, and global competitiveness
- Affordable modern health care
- Reduced traffic and environmental burdens
- Cultural enrichment
- Control own destiny
- Quality of life

# What's Really at Stake – America's Global Competitiveness

- Much of what we do at work, at home, and at play will increasingly be done through broadband, at much faster speeds than today
- World economy is growing interconnected and “flat”
- We are going to lose most of our manufacturing jobs to China, India, and other low-cost nations
- Our best hope: prepare our communities and population ASAP for high-tech, info-based jobs
- **Critical need: a national broadband policy to promote prompt, affordable, and ubiquitous access to advanced communications networks**

# So, How Are We Doing?

“America's record in expanding broadband communication is so poor that it should be viewed as an **outrage** by every consumer and businessperson in the country. Too few of us have broadband connections, and those who do pay too much for service that is too slow. It's hurting our economy, and things are only going to get worse if we don't do something about it.”

FCC Commissioner Michael Copps  
*Washington Post*, January 8, 2007

# **What Do Local Governments Need To Do**



# City Ordinances



Source: Gary Bolles

# Some Good Reasons For Revising City Ordinance(s)

- Expectation of multiple communication providers and ROW use
- Encourage broadband to meet city current and future needs
- Improve city administration and oversight
- Ensure an open competitive environment
- Protect city compensation and public benefits
- Different types of services subject to different local authority
- Provides a level playing field
- React to legal changes and time limits

# Possible Approach

- Chapter 1 -- General
- Chapter 2 -- Video
- Chapter 3 -- Wired Telecom
- Chapter 4 -- Wireless Telecom
- Chapter 5 -- ROW Construction

# ROW Construction And Police Power

- Public health, safety and welfare under local control
- Section 253 – Telecom Act 1996
- Must be reasonable and non-discriminatory
- Not a way to regulate service – limited to ROW management
- Permit fees not a substitute for ROW compensation may be limited by state law

# Direct And Indirect Costs Of Entry Into The Rights-Of-Way

As more users seek to enter the rights-of-way, public safety concerns intensify and management costs escalate. With each additional entrant into the rights-of-way, local governments face increased road replacement costs. Local governments and citizens also face indirect costs such as increased travel time, loss of access and trade to local businesses, and increased noise pollution and visual intrusion. The rent occupants pay to local governments for the permanent use of the rights-of-way helps to defray only a portion of these costs. Without the ability to receive fair and reasonable compensation for the use of the public rights-of-way from all private users, local governments will be forced to raise taxes in order to cover the increased rights-of-way costs associated with telecommunications competition.

Source: NATOA

# RIGHT OF WAY VALUE, COST, AND FEE COMPARISON

*Source: Greater Metro Cable Consortium*  
Estimated Figures for the Denver Metro Area

(\$000's)

5,000,000

600,000

500,000

400,000

300,000

200,000

100,000

0

Total Local  
Acquisition Value  
of ROW (Unimproved)

Fair Rental Value  
(Annual) of Unimproved  
ROW Property

Fees and Charges  
Paid by ROW Users

Maintenance  
Expenditures (Federal,  
State, and Local)

# Process

- Form a committee
- Evaluate what is in place
- Evaluate state and federal law, rights and restrictions
- Outline requirements for your community
  - Cable
  - Telecom
  - Wi-Fi
- Create regulatory and broadband goals
- Consider options – including ownership

# Process

- Develop as part of plan
  - Communications Code
  - How city will meet (or seek to meet) community service needs
- Industry workshop
- City government approval