Next Century Cities

JUNE MEMBERS' CALL:

MANAGING RIGHTS OF WAY

NEXT CENTURY CITIES | Connecting Communities

Our Panelists

Chris Mitchell – Next Century Cities (moderator)

Chris Dumais – South Portland, ME

Gabriel Garcia – San Antonio, TX

Mary Beth Henry – Portland, OR

ACCESS TO MUNICIPAL ROW IN TEXAS

Gabriel Garcia
Director & Senior Counsel
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Disclaimer: The views expressed are personal observations and not the positions of CPS Energy or the City of San Antonio.

Requirements to Access Municipal ROW

- **Telecommunications Providers** – Certificate from the Texas PUC
  - Certificate of Convenience and Necessity (CCN)
  - Certificate of Operating Authority (COA)
  - Service Provider Certificate of Operating Authority (SPCOA)
- **Cable Companies** – Certificate from the Texas PUC
  - State Issued Certificate of Franchise Authority (SICFA)
- **Wireless Carriers** – License/Franchise Agreement from City
  - ROW Master License Agreement

Requirements to Attach to Poles

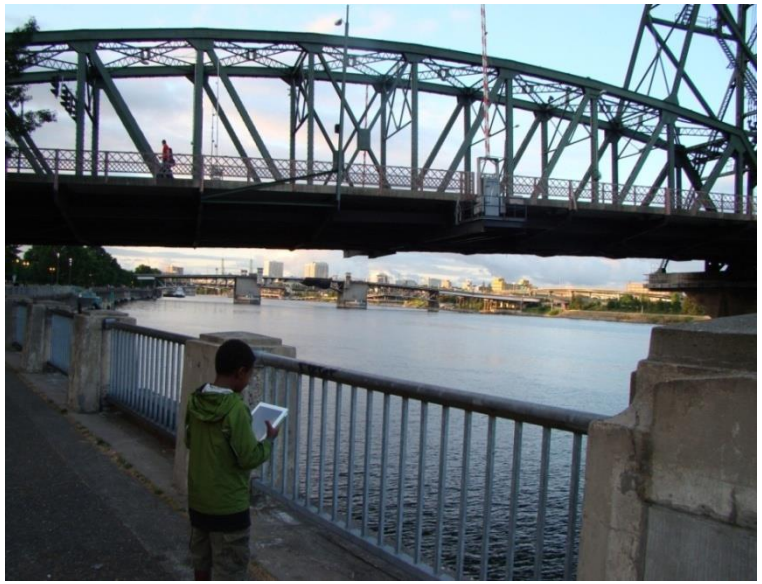
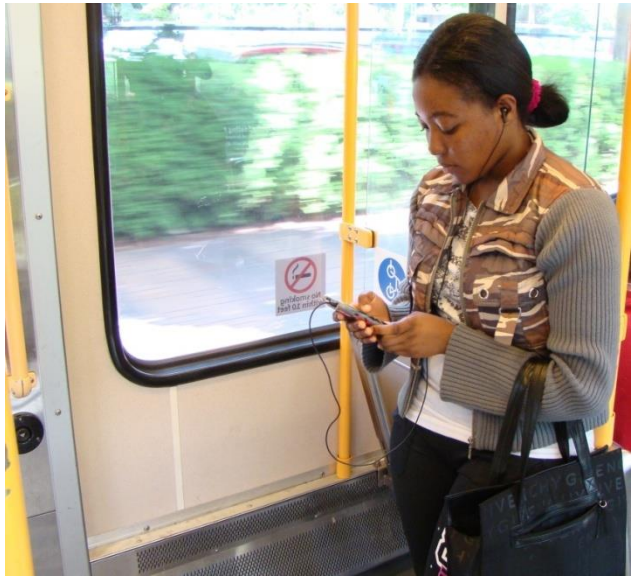
- **Two Separate Legal Rights**
  - ROW Use – Obtain Certificate of Authority – Statutory Right
  - Pole Access – Negotiate Pole Attachment Agreement – Contractual Right
- **ROW Permitting** – Necessary to manage activity in ROW:
  - Protect public streets
  - Manage impact on traffic flows
  - Coordinate joint utility projects
  - Conduct inspections
- **Pole Permitting** – Necessary to manage attachments to poles:
  - Protect utility infrastructure
  - Recover make-ready costs
  - Protect rights of multiple attaching entities
  - Conduct inspections

DELIVERY OF SERVICES

- **Certificated Telecommunications Providers (CTPs)**
  - Basic Telephone Service – Pay Franchise Fee
  - Enhanced Telecommunications Services – Pay Franchise Fee
  - Facilities-Based VoIP – Pay Franchise Fee
  - OTT VoIP – No Franchise Fee
  - DSL Service/Broadband Service – No Franchise Fee
- **Certificated Cable Companies (SICFA Providers)**
  - Cable/Video Service – Pay Franchise Fee
  - OTT VoIP – No Franchise Fee
  - Cable Modem/Broadband Service – No Franchise Fee

LIMITATIONS ON USE OF ROW

- **Basic Legal Principle** – The primary purpose of ROW is to manage vehicular and pedestrian traffic. The use of ROW to deliver communication services is a privilege, <u>not</u> a right.
- **Several corollaries stem from this legal principle:**
  - Cities are entitled to receive "rental fees" for use of ROW.
  - Providers have no property interest in ROW.
  - Permission to use ROW for one purpose does not authorized another use.
  - Use of ROW without authority constitutes illegal trespass.
  - Free access to ROW is considered an illegal "gift."

Connecting to Our Future:

ROW & Broadband

Mary Beth Henry
Office for Community Technology
City of Portland, OR

What is broadband?

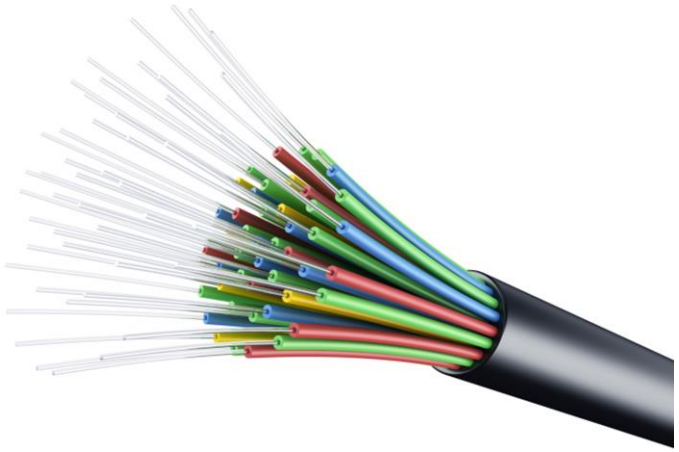
First, a few disclaimers

- State law
- Local Authority
- PUCs/Public Service commissions

A competitive state of the art broadband market -affordable, ubiquitous Fiber system for residents and businesses.

Making Portland “fiber-ready”

The City’s Broadband Strat



What is a franchise?

- Grant of authority by municipality to an entity for the long term use of the right of way
- Management of a valuable publicly owned asset

Why?

- Public interest—managing the ROW
  - Neutral & Non-discriminatory
  - Finite resource
- Transportation
- Public Safety
- Technology is evolving—new and different uses of the ROW
- Many users

Portland, Oregon

- Cable—Comcast & CenturyLink
- ILECs—CenturyLink and Frontier
- 12 competitive providers
- 9 long haul telecommunications companies
- 7 wireless
- Utilities—Electric, natural gas, water and sewer
- 2 Phone booth companies
- District energy
- Electric Vehicle Charging Stations
- 6 pipelines
- Other

What to do?

- Develop policy - work with Attorney, Mayor & Council, Carriers and Citizens
- Streamline ROW processes wherever possible
- Many Hats – Regulator, Landlord, Customer, and Broadband Cheerleader
- Do your homework – What are other cities doing? Technological change? NCC, NATOA, CLIC

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