

“International Rights of Way Association Speech”
January 22, 2004
By: Meredith Attwell

I. Background

I want to thank IRWA for holding this conference and inviting NTIA to speak. I am Meredith Attwell, Senior Advisor at NTIA. Most of the other agencies speaking today are rights-of-way managers. NTIA, on the other hand, serves as the chief telecom advisor to the White House. This is important to you, because this gives NTIA a unique perspective on rights-of-way issues.

At NTIA, we are interested in the deployment of broadband services across America. Broadband, also known as high-speed Internet access, is bringing new services and products to American consumers and businesses, fostering innovation, investment and job-producing economic growth. It has the potential to revolutionize commerce, education, healthcare, national security, entertainment, and countless other areas for the American people. The President has recognized the economic vitality that can result from broadband deployment and has called on the Nation to be aggressive about the expansion of broadband.

A key to widespread broadband deployment is ensuring that broadband providers have timely and cost-effective access to rights-of-way – so that they can build out their networks across the Nation. In the broadband context, rights-of-way include access to the conduits, corridors, trenches, tower sites, undersea routes and other locations that broadband networks occupy. These passageways often cross large areas of land owned or controlled by the Federal Government. Thus, effective and efficient federal rights-of-way policies and practices are critical for promoting broadband deployment.

And that is where we come in. In October 2001, NTIA conducted a Broadband Forum. We received comments in our Broadband Deployment Proceeding in 2002. Not surprisingly, participants cited rights-of-way issues as having a major impact on broadband deployment. Some 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. At the same time, we know that rights-of-way managers need flexibility in how they regulate rights-of-way.

II. Federal Rights-of-Way Working Group Report

To ensure the Federal Government’s rights-of-way policies and practices facilitate the aggressive deployment of broadband networks, and to lead by example, the Bush Administration created a Federal Rights-of-Way Working Group in July 2002. The Working Group was composed of representatives of most of the major federal agencies

with land management responsibilities. The Working Group's mission was to identify and recommend changes in federal laws, regulations, policies, and practices that would improve the process for obtaining rights-of-way on federally-owned or federally-controlled real property for the deployment of broadband networks.

The Working Group attempted to strike an appropriate balance between the telecommunications industry's desire to build out broadband networks and federal land managers' responsibility to ensure appropriate use of public land. In balancing these two sometimes conflicting interests, the Working Group sought reforms that would provide industry with a more customer service oriented experience, while allowing federal land managers to operate more effectively and efficiently. The reforms are intended to streamline, standardize, and simplify rights-of-way management across all relevant federal agencies.

The entire Working Group met several times to obtain input from a variety of stakeholders. It consulted with industry members, such as incumbent and competitive local exchange carriers, wireless providers, telephone cooperatives, cable and satellite companies, and trade associations, such as the International Rights of Way Association. State, local, and tribal government officials, and associations representing their interests also provided views, as did members of environmental protection, historic preservation, and other stakeholder groups. After identifying several areas of concern, the Working Group established subcommittees to study the issues and develop recommendations to address them. The issues included: 1) Information Access and Collection; 2) Timely Processing; 3) Fee; and 4) Compliance.

The Working Group has prepared a report of its recommendations, and it is now circulating for final review by affected agencies. We expect that the process will be completed soon.

Information Access and Collection: Broadband providers that operate in multiple jurisdictions often must supply the same information in different applications to numerous authorizing agencies. The Working Group looked for ways to streamline and standardize applications to save time and reduce costs for all involved.

Timely Process: Undue delay can increase the cost of broadband deployment, or even deter deployment altogether. Therefore, the Working Group examined practices that could facilitate timely review and appropriate action on rights-of-way applications.

Fees: The nature and amount of fees that broadband providers pay for access to public lands vary widely across federal agencies. The Working Group studied various fee structures, looking for reasonable and appropriate approaches that do not unfairly impede broadband deployment.

Compliance: Rights-of-way managers have a legitimate interest in ensuring that broadband providers construct, operate, and maintain rights-of-way as authorized. The

Working Group sought examples of remediation and maintenance requirements that accomplish those important goals without unduly burdening broadband providers.

The Working Group reached consensus on many issues, and built on the considerable coordination and collaboration already begun by the Bureau of Land Management and the U.S. Forest Service. Between them, they manage the vast majority of public lands. Although the Working Group focused on reforms for promoting broadband deployment, it expects that its recommendations will improve rights-of-way management in the telecommunications industry as a whole, and in other industries requiring access to federal lands, such as the energy industry.

III. State and Local Rights-of-Way Website

Access to rights-of-way is an equally significant issue at the state and local levels. Although NTIA has no jurisdiction over states and municipalities, we thought we could play a useful role by providing a central resource for governments and telecom providers through a State and Local Rights-of-Way website. This website provides three types of resources: (1) a compendium of relevant statutes on rights-of-way, covering such information as compensation, timelines, nondiscrimination, mediation, and condemnation; (2) a summary of “success stories” or best practices where state and local governments have developed improved solutions to providing access to rights-of-way; and (3) links to rights-of-way resources, including reports, transcripts, guidebooks and other resources for rights-of-way stakeholders. The latter also includes referrals to other association websites, such as IRWA’s.

NTIA sees this website as an evolving compendium, which will be updated regularly when laws change or when new “success stories” are contributed. NTIA invested many months collecting the initial set of “success stories” from local and state governments and from telecom providers. We hope that IRWA will help us in the effort to solicit good examples from which other cities and states can learn.

The “success stories” that we have received so far pertain to many facets of rights-of-way access. For example, we heard several successes regarding the actual drafting of the rights-of-way ordinance. The cities of Plano, Texas, and Beverly Hills, California both involved rights-of-way users in crafting their ordinances. They claim that this process resulted in an ordinance with greater buy-in from the rights-of-way users.

Other areas, such as the state of Florida and the Denver metropolitan area, have adopted a model ordinance approach. This 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.

Many localities have also 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.

Remediation and maintenance is another issue that concerns local governments and providers. These issues concern 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.

NTIA met with the District of Columbia Department of Transportation, which extolled its fleet 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, these employees are also able to address other neighborhood concerns or violations.

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. NTIA's website includes 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.

IV. Conclusion

In summary, to promote the President's goal to build-out broadband networks, NTIA is working on the federal, state, and local levels to streamline and simplify rights-of-way processes and procedures in ways that work for telecom providers and rights-of-way managers.

I want to thank IRWA for helping in our efforts and for having me here to tell you about NTIA's activities.