

Right-of-Way as Essential Infrastructure for Statewide Information Delivery

By Michael C. Keeling, JD, PE

Keeling Law Offices

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RoW, Essential Infrastructure For Statewide Information Delivery

- **The Vision**
 - **Hasten deployment of broadband deployments**
 - **Pay once**
 - **Firm schedules**
- **Framework for Essential Infrastructure**
 - **Consistent (federal,) state and local rules**
 - **Streamlined implementation policies and procedures**
- **Elements of Essential Infrastructure**
 - **Longitudinal**
 - **Vertical**

Barriers to Establishing Public RoW As Essential Infrastructure For Statewide Information Delivery

- **Barriers - Current Situation**
 - **Arizona Constitutional Restraints**
 - **Gift Clause**
 - “Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever ... make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation”
 - **Federal land-grant Requirements**
 - Arizona-New Mexico Enabling Act, Act of June 20, 1910, Pub. L. No. 219, ch. 310, 36 Stat. 557 ("Enabling Act").
 - "the highest and best bidder at public auction" and requires an appraisal of the value of the land before there can be a disposition of the land for its "true value."
 - **Vague procedures**
 - **Multiple interpretations**
 - **No firm timelines**

Barriers to Establishing Public RoW As Essential Infrastructure For Statewide Information Delivery

- **Federal Laws and Rules**

- **Federal Highway Administration (FHWA) Rules**

- FHWA is responsible for highway safety (23 U.S.C. § 401)
 - RoW Management on the interstate system (23 U.S.C. 109(1) and 111(a))
 - Implementing regulations, telecom installations (23 C.F.R. Pt 645, Spt B)

- **Other Federal Laws Include**

- Federal Land Policy Management Act of 1976 (FLPMA)
 - Public Law No. 107-217 Sec. 1314 (40 USCS Sec. 1314)
 - National Environmental Policy Act (NEPA)
 - National Historic Preservation Act (NHPA)
 - Endangered Species Act (ESA)
 - National Marine Sanctuaries Act.

Barriers to Establishing Public RoW As Essential Infrastructure For Statewide Information Delivery

- **State Statutes and Rules**

- **Revised Arizona Statutes**

- ARS §§ 9-581 - 9-583: A political subdivision (city, county, municipality, etc.) has the authority to manage its public highways and exercise its police powers, but may not exercise such power to prohibit the ability of any telecommunications company to provide its service.
 - A.R.S. § 37-461 - “. . . or conveys a perpetual right to use the surface of the land, the department shall grant the right-of-way or site at public auction to the highest and best bidder.”

- **Arizona Department of Transportation Rules**

- Arizona Department of Transportation (ADOT) Shared Resource Telecommunication Infrastructure Wireline Policy

- **Arizona Landowner Statutes and Rules**

- Federal land
 - Native American land
 - State land
 - Local government land
 - Private land

Barriers to Establishing Public RoW As Essential Infrastructure For Statewide Information Delivery

- **Local Ordinances**

- **Cable franchise Ordinances and rules**

- **Rights of way ordinances and rules**

- **Highways and streets**

- **State highways**

- **Municipal streets**

- **Sewers**

- **Municipal sewers**

- **Sanitary district sewers**

Near-term Strategies For Overcoming Barriers To Public Longitudinal Rights-Of-Way

Necessary Legislative Actions - Model BB Longitudinal RoW Legislation

- **Scope/term/indemnification legislation**
 - **Naming broadband a critical infrastructure**
 - Requiring consideration of public benefits received from increased broadband deployment -- the “broader public interest”
 - **State land**
 - Requiring “Dig once” joint-trenching for all rights-of-way projects receiving state funding
 - **Local governments**
 - Setting standard-low-cost fees for access to state rights-of-way on a management and cost recovery basis
 - **Power utilities**
 - Establishing master contracts
 - **Including broadband access into universal service**
- **Timeliness of permitting process**
 - **Fixed, limited permitting period unless extended by permittee.**
- **Streamlined enforcement**
 - **Centralized authority at State level**
- **Exclusivity limits/prohibitions**
- **Alternative Dispute Resolution**

Near-term Strategies For Overcoming Barriers To Public Longitudinal Rights-Of-Way Necessary State Policy Actions

- **Executive orders**
 - Ordering maximizing use of federal resources
 - Ordering project collaborating, joint-trenching and shared-conduit construction
 - Ordering reasonableness standards for fees
 - Competitive neutrality
 - Fixed/formula driven
 - In-kind compensation
 - Prohibiting/limiting unrelated permit conditioning
 - Limiting cost recovery – for government actions
 - Ordering timeliness of permitting process
 - Fixed, limited permitting period unless extended by permittee.
 - Ordering centralized streamlined enforcement at state level
 - Consider naming broadband infrastructure critical infrastructure
- **Codifying A.R.S.'s**
 - **Necessary Rule Making for carrying out executive orders**

Near-term Strategies For Overcoming Barriers To Public Vertical Rights-Of-Way

Necessary Legislative Actions - Model BB Vertical RoW Legislation

- Promote Project Collaboration and Sharing of Rights-of-Way
- Facilitate Tower Access
- Leverage Smart Grid Projects
- Facilitate Easier Access to Existing Infrastructure - Pole Attachments
- Prioritize Public Safety Uses

Near-term Strategies For Overcoming Barriers To Public Vertical Rights-Of-Way Necessary State Policy Actions

- **Executive orders**
 - Mandating master contracts, common terms and conditions
 - Lowering right-of-way fees to cost-based levels
 - Lowering telecommunications pole rent formula close to cable television pole formula rate
 - Facilitating easier access to existing infrastructure - pole attachments
 - Creating a state, tribal and local task force to identify right-of-way best practices to speed deployment and cut costs.
 - Consider naming broadband infrastructure critical infrastructure
- **Codifying A.R.S.'s**
 - Necessary Rule Making
 - Creating timelines to govern every step of the pole attachment permitting process
 - Permitting constraints
 - Studies, archeological, others
 - Cultural siting limitations