

The Public Right-of-Way

“Are you Recovering All of Your Costs?”

October 2, 2009

NATOA 2009 Annual Meeting

R. E. Pender, Inc.

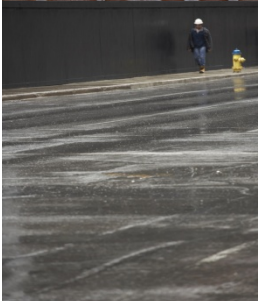


Statutory Authority

- Section 253(c) of the 1996 federal Telecommunications Act (1996 Act, 47 U.S.C. §253)

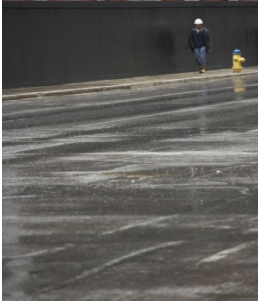
“STATE AND LOCAL GOVERNMENT AUTHORITY – Nothing in this section affects the authority of a state or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on competitively neutral and non-discriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” (underscoring added)

Fair & Reasonable Compensation



- State and local governments therefore have the statutory authority to seek fair and reasonable compensation for use of the PROW.
- Historically, government entities have primarily relied on franchise fees as the method of compensation.

Fair & Reasonable Compensation (cont.)



- However, franchise fees may or may not adequately compensate the government entity for its actual costs of owning, managing and operating the PROW.
- The big unknown is – what constitutes fair and reasonable compensation.



Unknown = Opportunity

- Certain courts (e.g., Iowa and Tennessee) have ruled that fair & reasonable compensation should be “cost-based” but failed to define exactly how costs should be determined.
- This provides the opportunity for the government entity to determine what costs it should be compensated for and how it should be compensated (e.g., user fees).

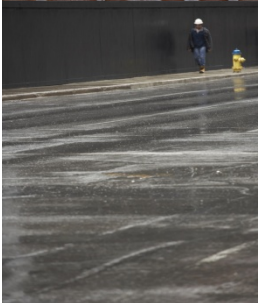


What Costs Should be Considered?

- Generally, all costs to own, manage and maintain the PROW.
 - Direct costs (e.g., road repair, maintenance, degradation).
 - Indirect costs (e.g., HR & IT support)
- Includes both capital costs (e.g., debt service) and operating expenses.



How Are Costs Determined?



- The PROW Cost Study
 - Requires a significant level of effort by the government entity.
 - Books and records are typically not maintained in a manner that specifically accounts for PROW costs.
 - Costs are developed and supported through analysis and judgment – relying on well established principles of utility rate regulation.



Mining PROW Costs

- Key is to develop a nexus between the cost incurred and the PROW.
- Departments must determine what activities are related to the PROW and how the costs of those activities should be apportioned to the PROW.
- Costs may be assigned or allocated depending on the activity and data available.

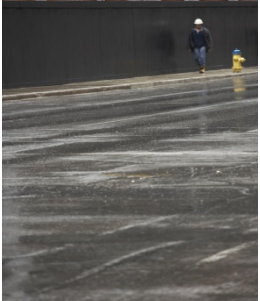


Mining PROW Costs (cont.)

- Departments that typically have direct PROW work activities:
 - **Public Works/Engineering** (street maintenance/repair).
 - **Fire and Police** (accidents, traffic control, security).
 - **Planning** (PROW improvement studies)
 - **Finance** (PROW financing activities)
 - **Parks** (landscaping, vegetation control)
 - **Codes Administration** (code compliance, permitting)

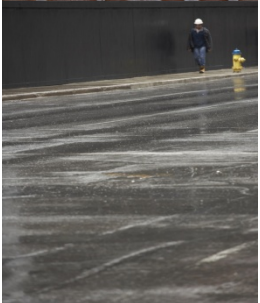
Mining PROW Costs (cont.)

- Departments that typically have indirect PROW work activities:
 - Human Resources
 - Information Services
 - Legal
 - Administration



Mining PROW Costs (cont.)

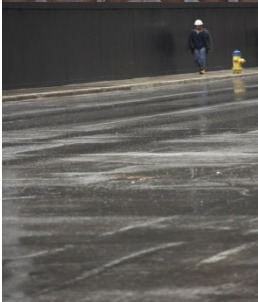
- PROW costs represent a significant portion of the government entity's annual budget.
- One recent study found that PROW costs represent approximately 6% of total annual expenditures for the government entity.



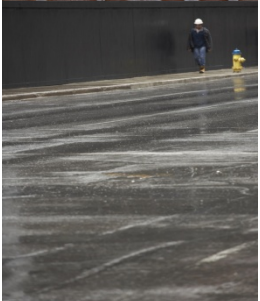
Mining PROW Costs (cont.)

- Illustrative Example

Description	Amount
Expenses	
Direct	\$ 50,000,000
Indirect	6,000,000
Depreciation	7,000,000
Renewals and Replacements	17,000,000
Total Expenses	80,000,000
Return on Investment (Interest Only)	80,000,000
Total PROW Costs	\$160,000,000
Less:	
PROW Costs Recovered From Other Users	30,000,000
<i>Net PROW Costs to be Collected from Utility Users</i>	<i>\$130,000,000</i>



Important Considerations



■ Public Right of Way ("PROW")

- Includes streets, roads, alleys, easements and public places including the entirety or full width of the ROW.
- Generally, the outer edge of the sidewalk on one side of the street to the outer edge of the sidewalk on the other side of the street or a certain distance – e.g., from 16 feet to 30+ feet either side of the center line of the street above and below the surface.



Important Considerations (cont.)

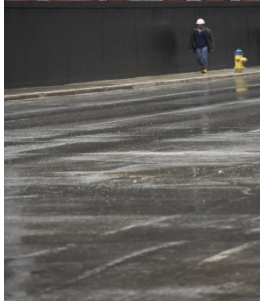
■ Users of the PROW

- Utilities (e.g., telecom, electric, etc.)
- Pedestrians
- Vehicle operators
- Business owners
- Government (e.g., police & fire)
- Other



Important Considerations (cont.)

- **Uses of the PROW**
 - Access to customers
 - Advertising
 - Transportation
 - Safety & Security
 - Recreation
 - Other



Questions?

- Contact:

Robert E. Pender, ASA

R. E. Pender, Inc.

467 Lake Howell Road, Suite 206

Maitland, FL 32751

407-644-9795

321-279-7261 (cell)