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CITY OF WEST HOLLYWOOD

Fiber Frenzy

Navigating Fiber Optic Deployments and Local ROW Management Authority

February 25, 2026

Agenda

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About Us

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Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm’s attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients’ interests at every turn. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

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Tim is a partner in the firm’s telecommunications practice group based in Washington, D.C. He has decades of experience representing local governments and other entities on communications and other federal law matters.

Presenters

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Helen Collins serves as the Public Works Director for the City of West Hollywood. She brings more than 26 years of municipal government experience, including 17 years with the City. She provides leadership and oversight for key public works functions, supporting the City's infrastructure, operations, and service delivery to the community.

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Brittany Weidner is an associate at Best Best & Krieger LLP where her practice focuses on telecommunications law. She works closely with local governments and public agencies advising on regulatory and transactional matters involving broadband and fiber networks, cable and telecom franchising, cell site leases and licenses, and wireless communication facility applications.

Introduction

Utilities in the ROW

Fiber Growth

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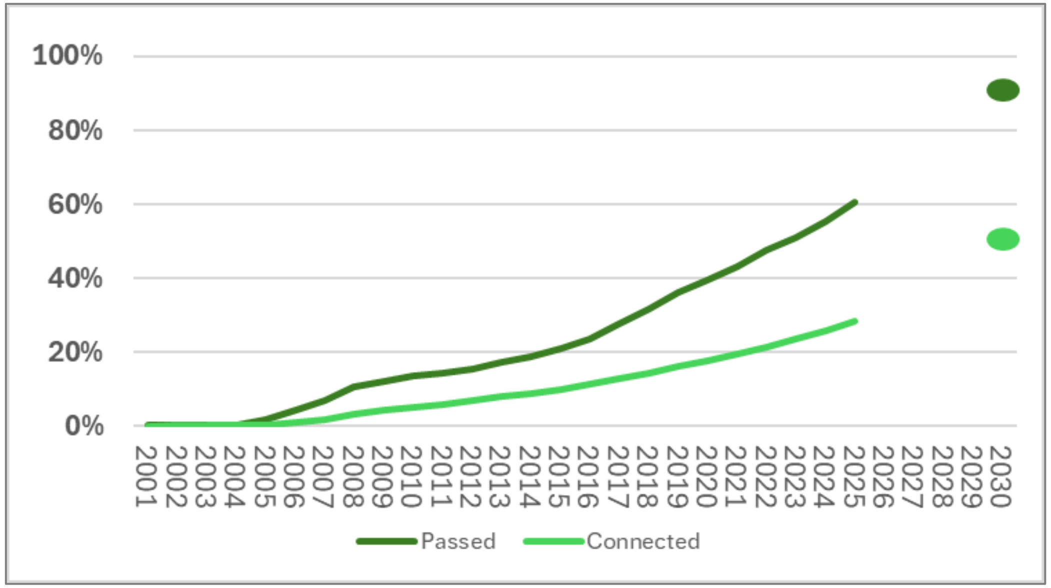
- Through Q3 2025, over 100M homes passed by fiber; 11% year-over-year growth.

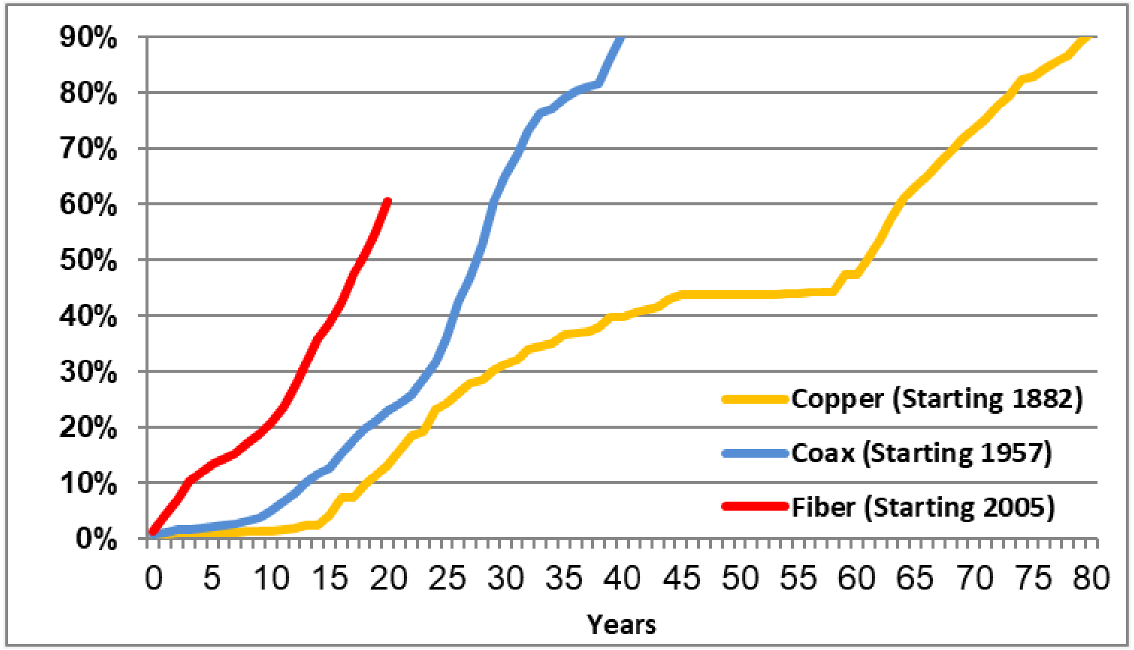


- *Source: Fiber Broadband Association*

Fiber Growth

- Fiber deployment occurring much more rapidly than copper and coax deployment did.

Household Penetration Versus Other Wireline Builds



- *Source: Fiber Broadband Association*

Who Uses the ROW Besides Vehicles and Pedestrians?

Industry	Deployment
Wireless carriers	Small cells; DAS; 5G
Telephone companies	Fiber; Small cells; DAS; 5G
Cable operators	Cable/Fiber; Wi-Fi hotspots; small cells; DAS; LoRaWAN
Gas, electric, water utilities	Lines; Advanced metering infrastructure (AMI); smart grids
Municipal/Public Agency	Traffic/parking/transit management; utilities; lighting; public safety
Others	Fiber infrastructure providers; monitoring systems, Public Infrastructure Network Nodes (PINNs), etc.

Oversight of Communications Services and Facilities

Jurisdictional Framework

How are communications regulated?

Federal

- Wireline telecommunications
  - Interstate and international services
- Wireless services
- Information services
- Cable operators
- Utility pole attachments (IOUs)

State and/or Local

- Wireline telecommunications
  - Intrastate services & ROW use
- Wireless siting (land use & ROW use)
- Cable service
- Franchising ROW use
- ROW management & compensation
- Pole attachments

Key Federal Actors

- **Congress:** Enacted Communications Act of 1934, Pole Attachment Act of 1978, Telecommunications Act of 1996, Spectrum Act (2012) and several other statutes
- **Federal Communications Commission:** Regulates interstate and international wireless & wireline communications through orders, regulations and decisions

Key State Actors

- **Legislature:** Has enacted state franchises for telephone and cable, several other statutes specifically related to wireless
- **California Public Utilities Commission:** Has legislative and judicial powers
  - “Regulates services and utilities, protects consumers, safeguards the environment, and assures Californians’ access to safe and reliable utility infrastructure and services.”
  - “Also includes hundreds of individuals who inspect track, municipal rail systems, electric and communications wire and poles, and gas pipelines.”
  - CPUC mainly responsible for rules on safety of infrastructure.

Role of CA local governments

- Local governments mainly regulate time, place & manner of ROW facility placement & maintenance for safe and efficient ROW use and (within limits) aesthetics.
- ROW management of communications facilities must comply with limits in state and federal law.

Communications Service Providers' Right to Use the ROW

Wireline and Wireless Facilities

Wireline and Wireless Authority

- Cal. Pub. Util. Code § 7901
  - Grants state franchise to CPUC-certificated “telephone corporations” to use ROW, subject to limitations (may not “incommode the public use”).
  - Telcos can use ROW without need for local franchise or payment of ROW (franchise fee) compensation to local governments.
  - Also applies to CPUC-certificated wireless companies and facilities.
  - However, this does not grant use of City-owned or controlled property *within* the ROW (more on that later) or to City-owned or controlled property outside the ROW.

CPUC & CPCNs

- PUC § 1001 Certificate of Public Convenience and Necessity (CPCN) for telephone corporations that provide full facilities-based/limited-facilities based and/or resold competitive local exchange services, interexchange services, and/or fixed interconnected VoIP services.
- PUC § 1013 Registration for telephone corporations that provide non-facilities based and/or resold competitive local exchange services, interexchange services, and/or fixed interconnected VoIP services
- Wireless ID Registration (D.94-10-031) for wireless service providers.

Incommoding the Public Use

- *Pacific Bell Telephone Co. vs. City of Livermore*, Court of Appeal, 1st District, Division 3, (filed Dec. 28, 2017)(unpublished, 2017 WL 8232408)
  - Court recognized City authority to regulate aesthetics under PUC § 7901.
  - However, it directed issuance of permit for additional above-ground line on utility pole, finding
    - the street was already “cluttered” with other utility and telecommunications facilities and
    - the denial decision lacked substantial evidence to support conclusion that the overlashed line would incommode the public’s use.

Cable and Video Providers

- DIVCA (Pub. Util. Code § 5800 et seq.)
  - Historically, cable franchising was local government process in California, subject to some federal Cable Act limitations such as a cap on franchise fees (charge for use or ROW) at 5% of gross revenues.
  - Between 2005 and 2015, over 20 states including California enacted laws transferring cable/video service franchising authority from local governments to the state.
  - DIVCA, enacted in 2006, requires operators to obtain a franchise from the CPUC, as the sole video franchising authority in California.
  - The statutory DIVCA video franchise lasts for a 10-year term and preserves most local ROW management authority over cable/video service providers.
  - DIVCA permits local governments, by ordinance, to (1) impose a 5% franchise fee on cable/video service providers, (2) require operators to provide public, educational, and governmental (PEG) cable access channels, and (3) impose via ordinance a 1% fee for the cost of PEG channel equipment & facilities (or up to 3% in certain circumstances).

ROW Permitting

Non-Communications Utilities

- Gas, Water, Electricity, Telephone:
  - Historically–
    - Encroachment Permits
    - Excavation Permits
    - Traffic Control Plans
    - Other minor ancillary permits

Communications Facilities

- Wireline telephone and cable/video—still fairly simple:
  - Encroachment Permits
  - Excavation Permits
  - Traffic Control Plans
  - Other minor ancillary permits
  - DIVCA (PUC 5885) basically gives cable/video same permitting rights as telephone
- Wireless—much more complicated, but focus here is on fiber (landline)

Federal Limits On Local Wireline ROW Permitting

Section 253

- 47 U.S.C. § 253:
  - No State or local government regulation or requirement “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”
  - States can still impose, on a neutral basis, requirements to protect public safety and welfare and safeguard consumers’ rights.
  - States and local governments have authority to manage the ROW and to require reasonable compensation from telecommunications providers for use of the ROW, on a nondiscriminatory basis.

What’s a “Prohibition”?

- Denying a permit could be if not an exercise of non-discriminatory ROW management.
- Taking too long to act on a permit could be.
- Imposing excessively costly post-street opening ROW repair/repaving requirements could be if, again, not an exercise of non-discriminatory ROW management.

New FCC Proceeding

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- To date, unlike the case with wireless facilities, neither Congress nor the FCC has adopted shot clocks and "deemed granted" remedies applicable to wireline ROW permit applications.
- That may change. FCC has initiated a new proceeding in which industry has asked the FCC to (among other things):
    - Adopt (1) new shot clocks, fee limitations and other restrictions applicable to wireline permit applications, and (2) new remedies (deemed granted? FCC complaint process?) that industry or the FCC can impose on local wireline ROW permitting authorities for alleged § 253 violations.

What about Fiber/Broadband-Only Facilities?

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- Does Section 253 apply to facilities that are used, and only necessary for, broadband services, not “telecommunications services”?
- Unsettled question. FCC wants to answer it in industry’s favor in the pending FCC proceeding discussed above.

New California Law Restrictions.

Gov’t Code § 65964.5: Microtrenching

- Cities (including charter cities), counties, special districts and publicly-owned utilities with jurisdiction to approve excavations must allow microtrenching, a new construction technique for the installation of underground fiber.
- Exception: A local agency may refuse to allow microtrenching only by making a written finding that microtrenching for a fiber installation would have a specific, adverse impact on the public health or safety.
- A “microtrench” is defined as “a narrow open excavation trench that is less than or equal to 4 inches in width and not less than 12 inches in depth and not more than 26 inches in depth and that is created for the purpose of installing a subsurface pipe or conduit.”
- Local agencies may need to adopt or amend existing policies, ordinances, codes or ROW construction/repair/repaving rules to allow for microtrenching and to establish permit review and installation inspection fees, including costs to expedite processing and review if the applicant so elects.
- Safety standards such as CPUC General Order 128 applicable to underground electrical supply and communication systems and the state DigAlert noticing requirements continue to apply to microtrenching.

Relocations

Relocations

- Wireless, Wireline, and Cable/Video Service providers:
  - CPUC 7901 and 7901.1 – Reasonable ROW control permits local governments to require relocation
    - Right of telephone and telegraph corporation to construct or lay lines in city streets was subject to implied obligation to relocate facilities at corporation's own expense when necessary to make way for proper governmental use of streets, and corporation's action for judgment declaring such right was not objectionable as action to adjudicate title to realty. *Pacific Tel. & Tel. Co. v. City and County of San Francisco* (App. 1 Dist. 1961) 17 Cal.Rptr. 687, 197 Cal.App.2d 133.

Relocations

- Please be aware of potential disqualification of certain projects from relocation due to funding source and whether or not it is in connection with a private development
- Weighing public/private benefit of particular street project
- *Pacific Tel. & Tel. Co. v. Redevelopment Agency of City of Redlands* (App. 4 Dist. 1977) 142 Cal.Rptr. 584, 75 Cal.App.3d 957.
  - Telephone company required to relocate underground facility and not entitled to compensation—city and redevelopment agency were acting in proprietary capacity
  - Company not denied procedural due process on theory that it was not afforded notice and opportunity to be heard—no taking or damaging of company's property

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Questions?

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