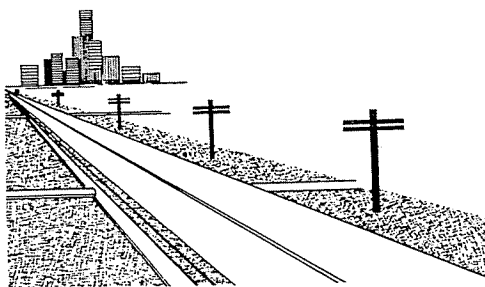


Transportation and Utility Corridors

Larry L. Hand



The hows, whys, whats, and future of joint use of rights of way.

What Are These Corridors?

In order to serve the general public, transportation and utility providers must be able to establish rights of way or corridors to provide their services to the public. Examples of transportation corridors include roads, canals, and railroads that connect the cities, industrial areas, farms, homes, etc. for the efficient transport of people, goods, and services. Utilities, such as power, telephone, water, sewer, gas, and CATV must establish corridors to connect their supply or processing locations to the customers who wish to be served. The importance of these services has been acknowledged in many states through the granting of the power of eminent domain to the associated governmental agency or utility company.

How Have These Corridors Been Established?

In the United States, transportation systems and utilities have evolved over the entire history of the country (of course, other countries have had similar development).

- Development of roads and canals was probably begun as soon as settlers began to arrive in the United States, and as time passed the associated rights of

way were documented and preserved for the public good.

- Railroads were built starting in the early 1800's.
- Water, sewer, and natural gas distribution systems were available in some areas during the 1700's and 1800's. This was possibly the first example of joint use of right of way, when it was recognized that placing these infant utilities in the public roads would cause the least impact on the public.
- Since the early 1800's, telegraph, and then telephone, services created a need for local distribution to interconnect customers. Intercity telephone and telegraph rights of way also were needed as long-distance routes were established. These facilities often were built using the most direct route and, therefore, they did not necessarily follow public roads. It is interesting that the construction roads that were made to build these lines were sometimes developed into public roads because, after the lines were completed, these construction roads were more usable than other roads in the area. Also, in those early days of telegraph and telephone, joint use pole lines were often built on railroad right of way to support telegraph, telephone, and railroad signal circuits.
- In the early 1900's, power services similarly began to develop both local distribution and transmission line rights of way. Until recent years, fears of high voltage inductance and corrosion problems kept other utilities from at-

tempting joint use of power transmission lines.

- Joint use of right of way and structures became common for telephone and power companies as they provided their respective distribution services to new customers using common poles on both public and private rights of way.
- In the past 20 years, CATV companies have begun operating across the country. They perhaps have had the highest percentage of joint use of right of way. Generally, they use public right of way to distribute to their customers and, where possible, they attach to the power or telephone company's pole lines. They acquire very little private right of way.

The point to the above chronology is to indicate that acquisition of the various transportation and utility corridors has been a very extended process, making coordination of current and future joint use needs very difficult. That is important to consider when we negotiate for their joint use.

Why Have Owners Resisted Joint Use for Their Rights of Way?

Even today, some right of way owners resist joint use of their right of way. There are many reasons for this resistance; some are valid and some are not.

- The owner may have a significant question as to whether a transportation agency or utility can acquire right of way for another unrelated entity, especially where there is an initial intention of subleasing or reselling the associated rights.
- Since many of these rights of way were not developed with joint use in mind, most owners feel that sharing the right of way would likely limit their future use of the right of way.
- The owner may see a significant burden to administer joint use agreements.
- The owner may see no significant financial gain from these joint use arrangements, especially if there is a significant administrative cost.
- The owner may see risks in having the joint user on his or her right of way, i.e., hazardous materials, power haz-

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ards, washouts from high pressure liquids, derailments.

Why have Potential Users of Others' Rights of Way Resisted Joint Use for Their Facilities?

Potential users of the rights of way of others have had their reasons for not entering into joint use.

- Most likely, other right of way has been conveniently available.
- There may be a perceived incompatibility of the facilities.
- There may be fear of damages to each other during construction and maintenance.
- Often, there is evidence of poor coordination and cooperation between the parties involved.
- The potential joint user may determine that there are unclear legal rights to share the right of way without additional permission from the property owners.
- Cost of other right of way may be more reasonable.
- Future needs of the potential joint user may dictate that sufficient and separate right of way be acquired as soon as possible so that the surplus right of way can be held until needed.

Why Do We Need Jointly Used Right of Way?

There are valid reasons why joint use of right of way should be considered.

- It is in the public interest to limit the taking of land that might otherwise be used for other purposes.
- The use of spare capacity in existing rights of way should be maximized.
- Jointly used right of way usually will provide cost savings to the rate payer and taxpayer.
- Environmental impacts can usually be minimized through the joint use of right of way.
- By using existing right of way corridors, development of a new transportation or utility corridor can usually be expedited.
- In some cases, following an existing corridor is the only reasonable way to

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traverse a route that would be very difficult to build otherwise. Tunnels and bridges are good examples of rights of way and structures that may be suitable for joint use for this reason.

What Types of Joint Use Corridors are in Use Today?

The most used joint use corridor today is public road right of way, where all utilities have placed their facilities for years. Perhaps this is the best evidence that joint use works, at least from the technical installation and maintenance aspects.

In most areas, public right of way became the right of way of choice because the public roads were generally wide enough to accommodate the various utilities and, in many cases, there was a favorable law or policy decision on the part of the road authorities stating that it was in the public interest to have utilities use public right of way where available.

Of course, this was not without disadvantages. First, the utility only obtains a permit

and, therefore, is subject to relocation at the utility's expense whenever road improvements conflict with the existing utility. This is generally very costly to the utility, but, on the other hand, the utility must admit that they knew that they might have to relocate at some point in time. Second, the road authority may place unwanted restrictions on the utility by requiring certain types and standards of construction, such as underground or aerial construction; wood, metal, or steel poles; extra depth of buried facilities, etc. Third, construction and maintenance operations may be limited to certain non-rush hour times of the day. This, at times, can affect work scheduling, costs, and restoration of customer service.

Another example of existing joint use is where long-distance and local telephone companies have shared common private rights of way for many years. Also, as stated earlier, railroads allowed communication pole lines and telephone and telegraph wires on their right of way over a 100 years ago. Telephone and power companies commonly share pole lines and the associated

rights of way. CATV companies share both power and telephone poles and their rights of way.

What About the Future of Joint Use of Right of Way?

Looking back, in the early 1900's when the telephone companies were placing their first long-distance lines across the United States, they had no way of knowing if power and gas lines were going to need to follow those same routes. As a result, the width of right of way and the right of way agreement forms only contemplated communications services, such as long-distance and local service. CATV use for the right of way was not considered because television had not even been invented. Using this as an example, we have to realize that many existing rights of way may not be legally suitable for joint use in their present legal state even though there is sufficient space for a joint user.

On the other hand, there are rights of way that have spare capacity and right of

way documents sufficiently broad to accommodate another party.

As responsible utility and transportation managers, we must all take every opportunity to minimize the impact of the expansion of our facilities on property owners, taxpayers, and utility rate payers. Cooperation among all transportation and utilities is a vital part of our responsibility.

As owners of right of way, we should be open minded to the requests of others to use our right of way. If there is a legal or technical problem that cannot be worked out, then joint use may not be possible.

As potential users of the right of way of others, we should be aware that we may be an unexpected burden on the right of way, and we should be willing to work closely with the owner to resolve all the problems associated with any joint use arrangement.

Also, because we all serve the public, the associated fees for joint use of right of way should be reasonable to all parties involved. Each proposed joint use location and its associated cost must be analyzed and compared with alternate locations and other construction options.

Of course, other terms and conditions besides cost should be considered when negotiating these agreements. They include:

- Annual fees or one time payments.
- Length of agreement and renewal options.
- Relocation clauses for the easement owner, property owner, or other easement users.
- Responsibility for facility location and staking for future construction.
- Access to facilities for maintenance.

It is important to remember that joint use of rights of way generally becomes more attractive as the density of developed lands increases. Also, we all will, at one place or another, need to cross or parallel each other's right of way. And, finally, the more open minded and cooperative we are as we work with each other, the more benefits that will accrue to the taxpayers and customers we serve. **IRWA**

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