

# Bond Case Briefs

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## Structuring Successful Broadband P3s: Nossaman

Public entities have recently been looking for new ways to harness right of way (ROW) for broadband public-private partnership (P3) projects. Last year, the city of [Santa Cruz](#) made history by entering into a roughly \$50 million P3 with local Internet service provider Cruzio to deliver 1-gigabit broadband access to every property in the city's jurisdiction. [Construction](#) began this month. [San Francisco](#) is now considering pursuit of a similar P3. On the other side of the country, the [Pennsylvania Turnpike Commission](#) ("PTC") recently released requests for proposals for legal and financial services for a broadband network P3 along the Turnpike right of way. The [State of Kentucky](#) entered into a 30-year P3 in 2015 with a private consortium with the goal to build a middle-mile broadband network to promote economic development, education and research capabilities, public safety, healthcare delivery and connectivity for libraries and communities.

The Santa Cruz and PTC P3 projects offer a study in contrasts. These two projects are using the P3 delivery model to meet different goals. Santa Cruz is using a P3 to expand broadband service within the municipality where the public will benefit from improved internet service and the private partner will benefit from increased business. The city plans to [fund the project](#) through a municipal bond backed by the future revenues from the service. [Santa Cruz will own the network](#) and Cruzio will operate it, paying the city rent.

While some of the details are unclear, it appears that the PTC is pursuing a shared resource model for its broadband P3. The PTC will make ROW available for a broadband fiber optic backbone with a WIFI overlay in exchange for dark or lit capacity (conduit alone or conduit plus service, respectively). The public benefit from this model is the increased service and capacity of the network for agency needs, and the private benefit is the ability to build and run a major backbone fiber optic system while avoiding right of way rental fees. In essence, the shared resource model allows a public entity to leverage private investment within its ROW to receive broadband capacity in return.

The economic beauty of the shared resource model lies in the fact that the incremental cost to the broadband provider of delivering backbone capacity to the public agency is a fraction of the value of that capacity to the agency and a fraction of the rental value for the right of way. For this low incremental cost, the broadband provider delivers value equal to or greater than the fair market rent that the public agency would otherwise charge. A true win-win.

As public entities continue to pursue broadband P3 projects, they must carefully assess and allocate the respective roles and responsibilities of the public and private partners. In addition to the design, construction, finance, and operations/maintenance of the broadband infrastructure, public entities must also consider how the telecommunications service will be provided and how it will be marketed. Unsurprisingly, how these roles and responsibilities ought to be allocated will depend on the government's objective. Project success depends on tailoring the delivery model to these objectives and financial constraints.

For this reason, the Santa Cruz P3 is going to allocate roles and responsibilities differently from the project the PTC is pursuing. The PTC is not seeking to provide last-mile internet service as a utility to a broad citizenry, as Santa Cruz is. Instead, entering into a broadband network P3 will provide the

PTC and the Pennsylvania Department of Transportation improved network connectivity through lit capacity for these agencies' own needs along the Turnpike's 550 miles of right of way.

Under the utility model, the public agency usually owns and maintains the fiber network and the private entity usually designs, constructs, administers, and markets the project and its resulting Internet service. Financing may be done by either or both parties. This model can scale and fund the project in one of two ways—first, as a ubiquitous system with a corresponding basic “utility” charge to all residents to finance the project with a corresponding option for each resident to enter into an individual contract with the Internet service provider, or second, on a pay-as-you-go basis that would be less expensive initially but would not provide ubiquitous service. [San Francisco](#) is grappling with these choices in its own quest to provided 1-gigabit services throughout the city and county.

This allocation of roles does not necessarily make sense for a broadband P3 project like the PTC's. The public agency does not need to own, operate or maintain the backbone system in order to attain its objectives. It merely needs the rights to its allocated capacity from the larger system. The broadband provider needs to finance, build, operate/maintain and market the rest of the system in order to generate revenues and profit from its capacity.

The Institute for Local Self-Reliance recently published a [report](#) addressing many of these issues, ultimately concluding that successful broadband P3s are structured in a way that provides meaningful benefits and control for both the public and the private entities involved. Public entities interested in pursuing broadband P3s must weigh the unique risks and rewards associated with such an arrangement and carefully allocate control to deliver a project that will succeed. As has been clear from the Santa Cruz and PTC cases, how broadband P3s are structured may vary greatly in order to tailor the P3 delivery model to different objectives and financial circumstances.

## **Nossaman LLP**

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