business) and many people are involved in the operation of a telephone system.[54] The case cites extensively the 1899 Supreme Court case of *Richmond v. Southern Bell Tel. Co.*,[55] which reached the same conclusion as to the enormous increase in the burdens placed on public property by a telephone company as opposed to a telegraph company.[56]

[¶21] Several cases have addressed the issue as to whether easements dedicated for public utility uses are compatible with subsequent technological improvements.[57] The general rule seems to be that technological improvements may utilize the easement so long as the new use is substantially compatible with the original dedication or grant and does not substantially increase the burden on the easement.[58] In *C/R TV, Inc. v. Shannondale, Inc.*,[59] the developer of a residential subdivision argued that cable television service was not a compatible use and/or it substantially increased the burden on the easement granted to a telephone utility. The court concluded that in this case technological innovations fit within the use of the easements as long as such innovations did not increase significantly the

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[54]*Id.* at 774.

[55]174 U.S. 761 (1899).

[56]Home Tel. Co. v. Mayor of Nashville, 101 S.W. 770 (Tenn. 1907). See also Postal Tel. Cable Co. v. City of Newport, 76 S.W. 159, 160 (Ky. 1903), in which the court specifically said that "the [placement of telegraph] poles and wires in the streets are a serious servitude [on the public property], and . . . [the telegraph company] could not impose this servitude upon the city, thus taking its [the city's] property without compensation."

[57]*See* Michels v. Times Mirror Cable TV of Louisville, Inc., No. 85-CA-1081-MR (Ky. Ct. App. Jan. 31, 1986), *cert. denied*, 484 U.S. 890 (1987); C/R TV, Inc. v. Shannondale, Inc., 27 F.3d 104 (4th Cir. 1994).

[58]*Michels*, No. 85-CA-1081-MR, slip op. at 2; *C/R TV*, 27 F.3d at 108.

[59]27 F.3d 104 (4th Cir. 1994).

burden on the estate.[60] The court found that as the telephone wires, which were fiber optic, already carry video images, there was in fact no distinction between the two--cable television and telephone lines that transmit video signals--which would result in any increased burden.[61]

[¶22] However, in 1971, the Fifth Circuit took another view, focusing on what services were authorized to be provided rather than focusing on the additional burdens placed on the easement estate due to "technological innovations."[62] While this case primarily upheld the initial FCC Cable-Telco cross-ownership ban, the court, *in dicta*, stated that providing cable television services was not incidental to providing telephone services.[63] The significance of this is that if cable service is not incidental to providing telephone service, then local telephone franchises may not have granted the authority to the telephone company to provide any other telecommunications services, including video dialtone service (as discussed below) under that local franchise. Therefore a new video franchise may be required to obtain that authority, notwithstanding that there is no increase in the "burden" on the easements by providing this "technological innovation."

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[60] *Id.* at 108-09.

[61] *Id.* at 109 ("The transmissions of a telephone company are virtually indistinguishable from transmissions of a non-telephone company transmitting television signals for purposes of a pole and wire easement grant."). *See also* Greater Worchester Cablevision, Inc. v. Carabetta Enters., Inc., 682 F. Supp. 1244 (D. Mass. 1985); Michels v. Times Mirror Cable T.V. of Louisville, Inc., No. 85-CA-1081-MR (Ky. Ct. App. Jan. 31, 1986).

[62] General Tel. Co. v. FCC, 449 F.2d 846, 855 (5th Cir. 1971).

[63] *Id.* at 860.

C. *FCC Activity*

[¶23] In late 1994, the 1991[64] and 1992[65] FCC video dialtone decisions were upheld by the D.C. Circuit in *National Cable Television Ass'n v. FCC*.[66] These decisions allow local exchange telephone companies to provide video dialtone services (essentially a video programmer's electronic pipeline) without a cable television franchise under the 1984 Cable Act and the 1992 Cable Act.[67] The D.C. Circuit concluded that video dialtone service is not a cable television service under the Cable Act, and therefore the Cable Act does not apply.[68]

[¶24] Video dialtone is a legal construct by the FCC of a telecommunications technology in which the the video programmer is an entity distinct from the owner/operator of the physical facility which transmits the programming.[69] The physical facility in this case is owned by the local telephone exchange company. Thus, in essence, video dialtone is a use of the telephone lines as a pipeline for cable television programmers. By that legal construct or separation of entities, those

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[64]Telephone Co.-Cable Television Cross-Ownership Rules, 7 F.C.C.R. 300 (1991) (first report and order) [hereinafter *Preliminary Video Dialtone Order*].

[65]Telephone Co.-Cable Television Cross-Ownership Rules, 7 F.C.C.R. 5781 (1992) (second report and order, recommendation to Congress and second further notice of proposed rulemaking) [hereinafter *First Video Dialtone Order*].

[66]33 F.3d 66 (D.C. Cir. 1994).

[67]*Id. See generally Preliminary Video Dialtone Order, supra* note 64; *First Video Dialtone Order, supra* note 65.

[68]*National Cable Television Ass'n*, 33 F.3d at 70-73. In 1991, Preliminary Video Dialtone Order, *supra* note 64, at 330, and in 1992, First Video Dialtone Order, *supra* note 65, at 5822-23, the FCC had reached the same conclusion.

[69]*Preliminary Video Dialtone Order, supra* note 64, at 306.

providing video dialtone services avoid the requirements of the Cable Act, including the need for a local cable television franchise.

[¶25] The FCC initially defined "video dialtone" as follows: "Video dialtone . . . is an enriched version of *video common carriage* under which [Local Exchange Companies] will offer various *non-programming services* in addition to the underlying *video transport* . . . [including] the transmission of entertainment video programming and other forms of video communications . . . ."[70] The FCC further explained in 1992 that in video dialtone service there is

> separate control over the creation, selection, and ownership of video programming from control over the facilities linking the program supplier and each of its individual viewers or "subscribers." This *separation* was *designed to comport* with the prohibition of Section 613(b) of the Cable Act against telephone companies providing video programming directly to subscribers in telephone service areas.[71]

[¶26] Due to the potential impact of this novel way of avoiding the application of the Cable Act, the D.C. Circuit opinion was widely covered in the national news media.[72] Almost without exception, these news stories characterized the court's holding in *National Cable Television Ass'n* in much broader terms than in fact was the case, suggesting that the holding nullified

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[70] *Id.* (emphasis added)

[71] Telephone Co.-Cable Television Cross-Ownership Rules, 7 F.C.C.R. 5069, 5070 (1992) (memorandum opinion and order on reconsideration) (emphasis added).

[72] *See, e.g.*, Jeannine Aversa, *Phone Firms Avoid Paying for Cable*, THE LEGAL INTELLIGENCER, Aug. 29, 1994, at 9; Jube Shriver, Jr., *Telephone Firms Don't Need Local Franchise For Video*, L.A. TIMES, Aug. 27, 1994, D at 01; Jon Van, *Phone Firms Free Of Franchise Costs*, CHI. TRIB., Aug. 27, 1994, Business, at 3; *No Franchise Needed In Video Cable Service*, THE NATIONAL LAW JOURNAL, Sept. 12, 1994, at B 4.

any local franchising requirements and the attendant franchise fees that local governments may impose on telephone companies which provide video services.[73] These characterizations by the news reports of *National Cable Television Ass'n* created a misconception that a locally required franchise, as opposed to one required by the Cable Act, is not required to provide video dialtone service or other new telecommunications services. In fact, neither the FCC nor the D.C. Circuit addressed in any way any franchise or right-of-way use agreements required pursuant to state or local law. The 1991[74] and 1992[75] FCC orders and *National Cable Television Ass'n* only addressed the very narrow issue of whether the Cable Act applied to video dialtone service.[76] They held it did not and no more.

1. *Local Franchise Requirements for the Provision of Video Dialtone Service*

[¶27] The FCC video dialtone decisions have given rise to confusion as to local franchise requirements for providing new telecommunications services.[77] The applicability of local or state franchise requirements to video dialtone may be questioned by those in the telecommunications industry because of the lack

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[73] *See* Jeannine Aversa, *Phone Firms Avoid Paying for Cable*, THE LEGAL INTELLIGENCER, Aug. 29, 1994, at 9; Jube Shriver, Jr., *Telephone Firms Don't Need Local Franchise For Video*, L.A. TIMES, Aug. 27, 1994, D at 01; Jon Van, *Phone Firms Free Of Franchise Costs*, CHI. TRIB., Aug. 27, 1994, Business, at 3; *No Franchise Needed In Video Cable Service*, THE NATIONAL LAW JOURNAL, Sept. 12, 1994, at B 4.

[74] *Preliminary Video Dialtone Order*, *supra* note 64, at 330.

[75] *First Video Dialtone Order*, *supra* note 65, at 5822-23.

[76] 33 F.3d at 70-73.

[77] *In re* Telephone Co.-Cable Television, CC Docket No. 87-266, 1995 FCC LEXIS 396 (Jan. 20, 1995).

of clarity in the FCC opinions. As stated above, the FCC ruled that "the Cable Act does not mandate that a local exchange carrier or its customer-programmer obtain a municipal cable television franchise [under the Cable Act] in order to offer video dialtone service."[78] In reaching that determination, the FCC had a significant underlying assumption in its analysis. That analysis, discussed in detail in the subsequent 1992 FCC opinion, assumed that because a local telephone franchise had previously been granted to the local telephone company, such franchise authorized the use of the local public rights-of-way.[79] The FCC commented that such a local franchise allows and enhances "the ability of . . . local entities to regulate such use [of the local rights-of-way by the telephone company]."[80] The FCC went on to state:

> In contrast to cable operators, local telephone companies *already* receive authorization to use the public rights-of-way pursuant to common carrier regulation. Consequently, there is no basis to infer that Congress intended that local telephone companies secure a cable television franchise to use the same rights-of-way they are *already* authorized to use.[81]

Unfortunately, the FCC did not clearly state under which regulations telephone companies had received the prior authorization to use local public rights-of-way. Still, it

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[78] *Preliminary Video Dialtone Order*, *supra* note 64, at 302; *see also id.* at 324-25 and 330.

[79] *First Video Dialtone Order*, *supra* note 65, at 5822-23.

[80] *Id.*

[81] *Id.* (emphasis added).

refers to a franchise as how that authorization is accomplished with cable television.[82]

[¶28] The FCC also explained in its 1992 opinion that as telephone companies already have a local franchise, which addresses the concerns about public safety and convenience and use of public rights-of-way, another franchise is not needed to provide video dialtone service. The FCC stated:

> Since these concerns [about use of the public rights-of-way] are *already addressed* by the existing common carrier regulatory scheme for telephone company facilities [in part by having a local telephone franchise], we conclude that Congress did not intend to subject telephone companies to the *duplicative regulation* that would occur if we were to find that a cable *franchise* is *also required* for video dialtone facilities.[83]

[¶29] Thus, the FCC's analysis assumed that local telephone companies providing video dialtone would already have a local franchise permitting use of public rights-of-way.

2. *The D.C. Circuit's Narrow Holding in National Cable Television Ass'n v. FCC*

[¶30] In *National Cable Television Ass'n v. FCC*, the D.C. Circuit, in upholding the FCC decisions, agreed that video dialtone was not a "cable service" as defined by the Cable Act, principally because it was only a conduit for the services.[84] The court analogized that in providing a video dialtone service the telephone company is like the post office in delivering a

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[82] *Id.*

[83] *Id.* at 5072 (emphasis added).

[84] National Cable Television Ass'n v. FCC, 33 F.3d 66, 72-75 (D.C. Cir. 1994).

letter.[85] The telephone company, in providing video dialtone service, is delivering a video message from one customer to another customer, but it is not determining in any way what the message is, or what is sent, or to whom or by whom it is sent.[86]

[¶31] The court distinguishes "video dialtone" and "cable service" under the Cable Act as follows:

> [V]ideo dialtone service and cable service are very different creatures: video dialtone is a common carriage service, the essence of which is an obligation to provide service indifferently to all comers--here, to provide service to all would-be video programmers. On the other hand, cable operators exercise "a significant amount of editorial discretion regarding what their programming will include."[87]

Video dialtone service is not "video programming" under the Cable Act definition and thus is not regulated by the Cable Act. Therefore, a franchise *under the Cable Act* is not required to provide this service.

[¶32] The court does not hold or suggest in any way that a local franchise to use public rights-of-way, as required under state or local law, is somehow preempted or negated, nor does it state that any local public rights-of-way can be used without a locally required franchise. The court, like the FCC, states that it would be *duplicative* to *require another franchise* for the non-cable television service of video dialtone, as the concerns about the public safety and use of rights of way have already been addressed in that pre-existing franchise.[88]

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[85] *Id.* at 71-72.

[86] *Id.* at 72.

[87] *Id.* at 75 (quoting FCC v. Midwest Video Corp., 440 U.S. 689, 707 (1979)).

[88] National Cable Television Ass'n, 33 F.3d at 73-74.

[¶33] The court quoted the House Report on the 1984 Cable Act which stated that nothing in the Cable Act was "intended to prevent a common carrier from constructing, *subject to applicable law*, a local distribution system that is capable of delivering video programming and other communications . . . to multiple subscribers within a community."[89] In other words, if applicable state or local law requires a local franchise to use public rights-of-way for that distribution system, those applicable local laws must be adhered to prior to providing the video dialtone service.

[¶34] Thus, neither the FCC's video dialtone decisions nor the D.C. Circuit's opinion addressed, in any way, local franchising requirements as required by applicable state or local law for providing video dialtone service. In fact, as has been noted above, the FCC predicated its opinion that no additional local cable television franchise was required to provide video dialtone service on the existing regulatory schemes which had already authorized use of the local public rights-of-way and already protected the local interest. The principal components of those regulatory schemes are right-of-way use agreements, typically by a local franchise to use the streets.

D. *Proposed Federal Legislation*

[¶35] In legislation proposed but not adopted on the "information superhighway" in the 103rd Session of Congress,

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[89] *Id.* at 71 (citing H.R. Rep. No. 934, 98th Cong., 2d Sess. (1984), U.S.C.C.A.N. 1984, p. 4655) (emphasis added)

particularly the Brooks/Dingell Bill[90], the Markey/Fields Bill (which passed out of the House after it was incorporated into the Brooks/Dingell Bill H.R.)[91] and the Hollings Bill[92] there were several sections with very broad language concerning preemption of state and local regulatory authority.

[¶36] Again, in the current 104th Congress, H.R. 411 was filed on January 4, 1995, by Rep. Markey, together with Rep. Dingell and Rep. Conyers.[93] This bill includes some of the same broad, problematic clauses that were in last session's bills regarding preemption of state and local authority to regulate telecommunications services in their state or local area.[94] For instance, section 302(a) of the legislation provides the following preemption language:

> (c)(3) PREEMPTION.
> (A) Limitation. . . . [N]o state or local government may . . .
> (i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunication service or information service, or *impose any*

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[90]H.R. 3626, 103d Cong., 2d Sess. § 302(a) (1994) (amending 47 U.S.C. § 201(c)(3)) ("Preemption . . . [N]o State or local government may . . . effectively prohibit any person or carrier from providing any interstate or intrastate telecommunication service or information service, or impose any restriction or condition on entry into the business of providing any such service.").

[91]H.R. 3636, 103d Cong., 2d Sess. (1994) (This bill was reported out of the House Committee with several new amendments. One was to exclude the "new" telecommunications revenue from the franchise fee base of the cable television franchise. Another amendment required "local franchise fee parity." If those two amendments had both been applied, current franchise fee charges on telephone franchises could have been challenged.).

[92]S. 1822, 103d Cong., 2d Sess. § 230(a) (1994) (". . . [N]o State or local statute or regulation, or other State or local legal requirement, shall prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunication services.").

[93]H.R. 411, 104th Cong., 1st Sess. (1995) (amending scattered sections of 47 U.S.C.).

[94]*Id.* § 302(a), (b)(1), (b)(2) (1995).

> *restriction or condition on the entry into the business providing* any such service . . . .[95]

[¶37] Telecommunications service companies may argue that these sections not only preempt or supersede state and local authority to regulate interstate telecommunications providers, but perhaps also even prohibit state or local governments from requiring compensation for the use of local public property.

[¶38] A narrow exception to this preemption allows state and local regulation that is "necessary and appropriate to . . . protect public safety and welfare,"[96] and that provides for "normal construction permits."[97]

[¶39] The bill allows, in section 302, for cable companies to provide other telecommunications services (including, presumably, telephone services)[98] and, in section 401, for local exchange telephone companies to provide cable services.[99] Section 302(a) also provides that all franchise fees and charges should be equivalent for all telecommunications operators.[100] In section 659(a)(3), the bill exempts video services provided by a telephone company from the franchise requirements of the Cable Act (including franchise fees),[101] yet section 659(b)(2) of the

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[95] *Id.* § 302(a) (amending 47 U.S.C. § 201 by adding subsection (c)(3)) (emphasis added).

[96] *Id.* § 302(a) (amending 47 U.S.C. § 201 by adding subsection (c)(3)(B)(i)).

[97] *Id.* § 302(a) (amending 47 U.S.C. § 201 by adding subsection (c)(3)(C)).

[98] *Id.* § 302.

[99] *Id.* § 401.

[100] *Id.* § 302(a).

[101] *Id.* § 659(a)(3).

bill requires local franchise fees to be charged that are comparable to Cable Act fees on such revenue.[102] However, section 302(b)(1) of the bill amends section 541(c) of the Cable Act to restrict the application of franchise fees on cable operators to apply only to cable service revenue, thereby excluding any telephone or other telecommunications service revenue from a cable operator's franchise fee base [103] The result of section 659 and section 302(b)(1) is a nonparity of fees. These provisions, taken together, could jeopardize existing franchise fee agreements of cable companies, telephone companies and other competitive access providers.[104]

III. CONCLUSION

[¶40] While the Supreme Court has ruled in a number of cases that Congress cannot appropriate state and local public streets and rights-of-way for the use and benefit of third parties without compensation, the authority actually to receive compensation for the use of state and local public properties is contingent on state law. The misconception (which has grown to almost a mythical proportion) that somehow federal regulatory oversight in the telecommunications area has wholly negated the

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[102] *Id.* § 659(b)(2).

[103] *Id.* § 302(b)(1) (amending 47 U.S.C. § 541(c)).

[104] At the time of final publication of this article there recently has been a Senate Bill, S. 652, 104th Cong., 1st Sess. (1995), introduced by Senator Pressler. That Senate Bill appears to address some of the issues raised in the article with regard to the parity issue of franchise fees. As presented, it allows "competitively neutral" franchise fees to be applied to both cable television operators providing telephone service and telephone companies providing cable service, i.e., both "new" sources of revenue being subject to franchise fees. *Id.* at § 201(a) (amending 47 U.S.C. § 254(c)).

need or authority of state and local governments to require a local telecommunications street franchise under the existing applicable state or local law prior to use of public property should not continue. FCC action and federal legislation should be monitored and revised or challenged if necessary to avoid any ambiguity that may give rise to litigation in this area. However, based upon the present law, in the event of such litigation, state and local governments should prevail.

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November 8, 1995

Survey Shows Cellular Industry Exaggerates Regulatory Burden--Most Local Tower Permits Approved

(Washington, DC)-- In a survey of 230 cities and counties across the country, the American Planning Association found that contrary to industry claims, 92 percent of permits for cellular towers are approved, most in less than 60 days. In fact, the survey shows that 76 percent of communities are streamlining their application process in order to help the industry put its network in place. The communities surveyed represent approximately 25 million people--approaching ten percent of the American population.

Working with the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Organization of Telecommunications Officers and Advisors, APA found that both large and small communities approve more than 92 percent of cellular tower applications submitted to them. Even though the survey found that eight percent of permits are denied, these figures cite only initial denials.

"We recognize there is a need for these towers," said Terrance Harrington, Director of Planning for Roanoke County, Virginia. "In cases where the applications don't meet community standards, the companies can work with us to submit another application that conforms. I would say that eventually, most towers get built."

The APA survey is timely because a House-Senate Conference Committee is considering an industry-backed provision in the House-passed telecommunications bill, H.R. 1555, which would preempt local government authority over the siting of cellular towers. Industry leaders have also petitioned the FCC to override local laws, claiming that local governments are trying to prevent tower sitings through cumbersome zoning and permitting requirements.

"Claims that cities are routinely denying antennae location sites represent a classic case of over-reaction by telecommunication companies," stated Michael Guido, Mayor of Dearborn, Michigan, who directs the work of the U.S. Conference of Mayors on telecommunications issues. "The survey's results confirm that the overwhelming majority of antennae citing requests are being granted in small, medium, and large cities across the country."

Although almost all applications are approved, respondents are most concerned about aesthetics in the siting of towers. Ninety-three percent believe that localities should remain involved in the approval process to ensure community integrity.

-over-

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November 8, 1995

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APA Cellular Tower Survey

In response to cellular industry claims that local governments are a barrier to construction of cellular towers, APA initiated this survey. The purpose of the survey was tri-fold: First priority was to determine if local governments impede the siting of cellular towers, and thus, the development of the "information skyway system." Second, was to determine local governments reaction to the cellular industry's attempt to gain federal preemption over local governments in the siting of cellular towers. And third was to collect information on siting requirements to assist local governments in the review of future tower applications. We began the survey in mid-September. As of November 7, 1995, we had received 230 responses from jurisdictions representing about 25 million people, which approaches 10% of the nation's population. More surveys continue to arrive daily. The data indicates:

- **92% of applications for permission to construct cellular towers are approved by local government review bodies (230 agencies received a combined total of 1,390 applications, 116 were denied).**

- **Not only do local governments approve the majority of applications they receive, 74% of them review and process applications in less than two months.**

- **Local governments are responding to the demand for this technology: Of the jurisdictions averaging longer review periods, 76% are streamlining or updating their current procedures.**

- **The primary concern related to cellular tower siting is aesthetic appearance, followed by structural integrity and health risks.**

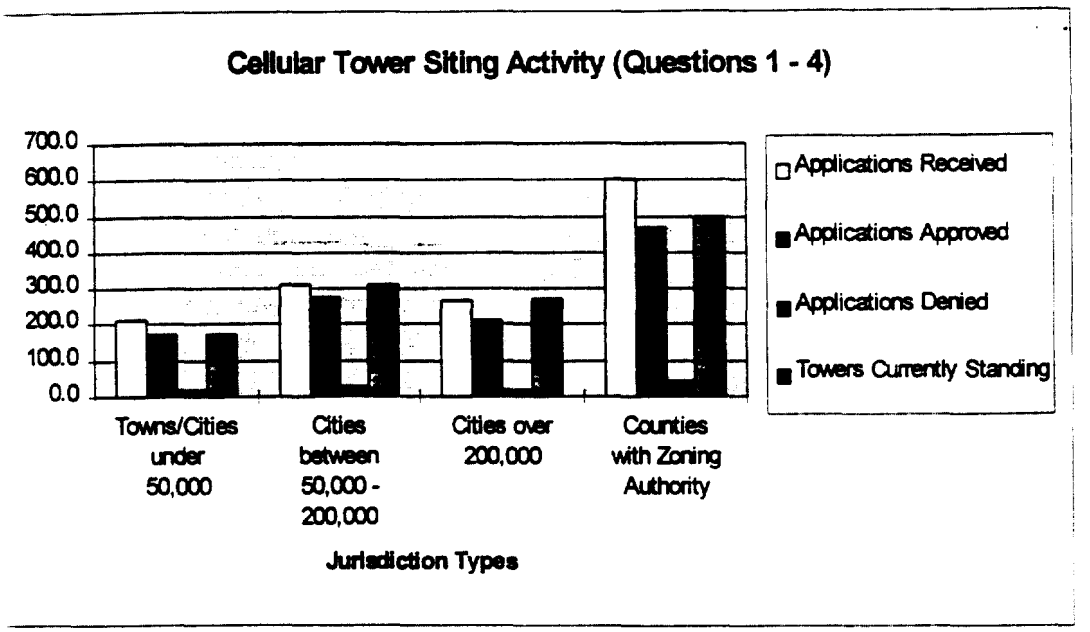
- **An overwhelming number of respondents, 93%, register opposition to federal preemption of local zoning and review authority. The regulation of cellular towers, like any other land use, is viewed as a local responsibility. Respondents believe that local governments are best qualified to analyze and mitigate the impacts of such land uses in the community, while also accommodating them.**

Working with the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Organization of Telecommunications Officers and Advisors, the survey was distributed to local governments in the following categories:

- Towns/Cities with a population under 50,000
- Cities with a population of 50,000 to 200,000
- Cities with a population of over 200,000
- Counties with zoning authority

Respondents were asked to comment on their experiences with the siting of cellular communication towers through the survey instrument attached (Appendix A). For the purposes of this report, we have limited our summary to the data on application review and pre-emption of authority. Data on the site specifications will be made available at a later date.

The results of our preliminary findings follow, according to jurisdiction size:



1. **Has your community ever received an application for permission to erect a cellular communication tower? _____Yes (how many?___) or____ No.**

230, or 100% of respondents said yes.

Towns/Cities with a population under 50,000

127 cities responded that they had received at least one tower application. In total, ***210 tower applications had been received by these cities.*** *An average of 1.65 tower applications per town/city.*

Cities with a population of 50,000 TO 200,000

51 cities responded that they had received at least one tower application. In total, ***311 tower applications had been received by these cities.*** *An average of 6.1 tower applications per city.*

Cities with a population of over 200,000

12 cities responded that they had received at least one tower application. In total, ***266 tower applications had been received by these cities.*** *An average of 22.2 tower applications per city.*

Counties with zoning authority

40 counties responded that they had received at least one tower application. In total, 603 ***tower applications had been received by these counties.*** *An average of 15.1 tower applications per county.*

Cities with a population of over 200,000

*Of those 266 applications, 22, or **8% of all tower applications had been denied** as of November 7, 1995.*

Counties with zoning authority

*Of those 603 applications, 45, or **7.5% of all tower applications had been denied** as of November 7, 1995.*

4. How many cellular towers does your community have now?

Towns/Cities with a population under 50,000

*The 127 respondents reported a total of 175, or **83% of all towers proposed as currently standing**.*

Cities with a population of 50,000 to 200,000

The 51 respondents reported a total of 309, or **99% of all towers proposed as currently standing.**

Cities with a population of over 200,000

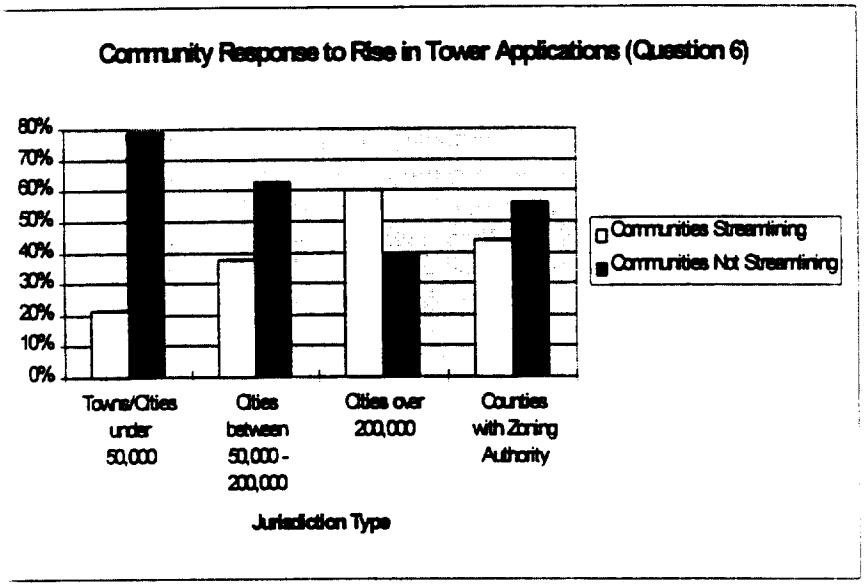
*The 12 respondents reported a total of 273, or **103% of all towers proposed as currently standing.***

Counties with zoning authority

*The 40 respondents reported a total of 498, or **83% of all towers proposed as currently standing.***

***Note:** The ratio of approvals to total towers standing is slightly skewed by the fact that some respondents included in their count of total towers standing, those which had been erected prior to the existence of their review process.*

6. **With an anticipated increase in tower applications, is your community updating or streamlining their present review process? a. _____ _ Yes b._____ No**



Towns/Cities with a population under 50,000
Of the 127 respondents in this category, 104 answered this question:

*22 or **21% reported they were attempting to update their review process.***

*82 or **79% reported they were not attempting to update their review process.***

Cities with a population of 50,000 to 200,000
Of the 51 respondents in this category, 48 answered his question:

*18 or **37.5% reported they were attempting to update their review process.***

*30 or **62.5% reported they were not attempting to update their review process.***

Cities with a population of over 200,000
Of the 12 respondents in this category, 10 answered this question:

*6 or **60% reported they were attempting to update their review process.***
*4 or **40% reported they were not attempting to update their review process.***

Counties with zoning authority
Of the 40 respondents in this category, 25 answered this question:

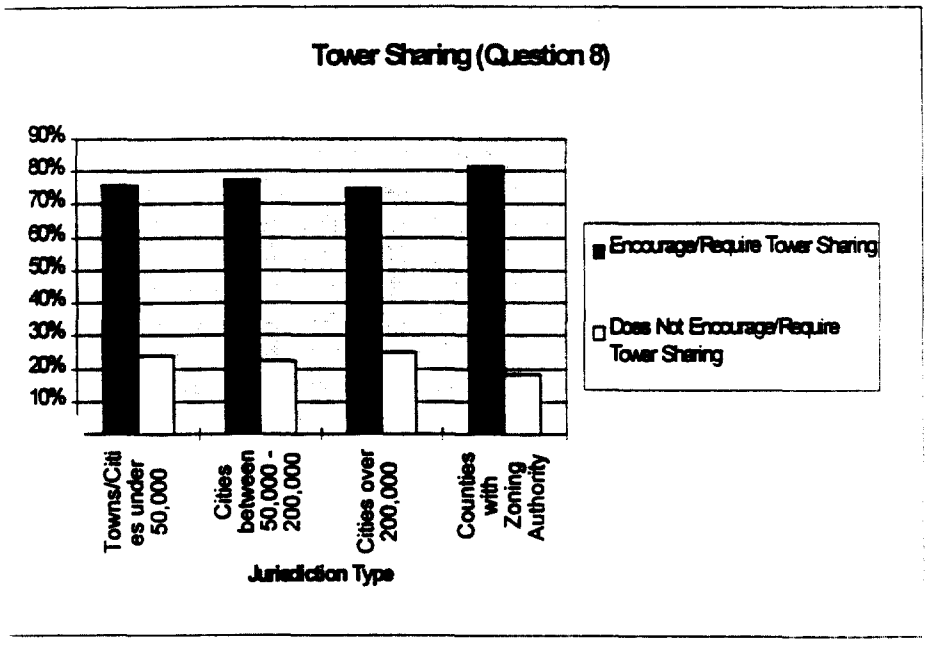
*11 or **44% reported they were attempting to update their review process.***
*14 or **56% reported they were not attempting to update their review process.***

8. **Does you community encourage or require tower sharing to the extent that it is technically feasible?**
a. Yes _____ b. No _____

Towns/Cities with a population under 50,000
Of the 127 respondents in this category, 100 answered this question:

*76 or **76% encourage or require tower sharing.***

*24 or **24% do not encourage or require tower sharing.***



Cities with a population of 50,000 to 200,000
Of the 51 respondents in this category, 49 answered this question:

*38 or **78% encourage or require tower sharing.***

*11 or **22% do not encourage or require tower sharing.***

Cities with a population of over 200,000
Of the 12 respondents in this category, 12 answered this question:

*9 or **75% encourage or require tower sharing.***
*3 or **25% do not encourage or require tower sharing.***

Counties with zoning authority
Of the 40 respondents in this category, 38 answered this question:

*31 or **82% encourage or require tower sharing.***
*7 or **18% do not encourage or require tower sharing.***

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1776 Massachusetts Ave. NW
Washington, DC 20036
Phone 202.872.0611

PLEASE RESPOND BY 10/23/95

APA Cellular Tower Survey--2 pages

1. Name _____

2. Title _____

3. Jurisdiction/Population _____

4. Address _____

5. a. City _____ b. State _____ c. Zip _____

6. a. Phone _____ b. Fax _____

7. Has your community ever received an application for permission to erect a cellular communication tower? _____Yes (If yes, how many?_____) _____ No.

8. How many tower applications has your community approved?_____

9. What were the conditions for approval? _____

_____

10. How many tower applications has your community denied?_____

11. What were the reasons for denial? _____

12. What year was the first application submitted?_____

13. How many cellular towers does your community have now?_____

14. Approximately how long does the application review process take? (from submission to final approval):

a. 2 - 4 weeks____ b. 1 - 2 months_____ c. 3 - 6 months_____
d. 6+ months_____

15. With an anticipated increase in tower applications, is your community updating or streamlining their present review process? a. Yes_____b. No_____

16. Were the main concerns regarding tower approval in your community related to:

a. aesthetic appearance____ b. health risks____ c. structural soundness____

17. Does your community encourage or require tower sharing to the extent that it is technically feasible? a. Yes _____ b. No _____

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0003.

Title: Application for Amateur Operator/Primary Station License.

Form No.: FCC 610.

Type of Review: Extension of a currently approved collection.

Resopondents: Individuals or households.

Number of Respondents: 93,000.

Estimated Time Per Response: 10 minutes.

Total Annual Burden: 15,438 hours.

Needs and Uses: FCC Rules require that applicants file the FCC 610 to apply for a new,renewed or modified license. The form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules - 47 CFR 97.17, 97.19, 97.511, and 97.519.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–7810 Filed 3–28–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Pennwood Bancorp, Inc., Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Pennwood Savings Bank, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to merge with Commercial Bancorp of Georgia, Inc., Lawrenceville, Georgia, and thereby indirectly acquire Commercial Bank of Georgia, Lawrenceville, Georgia.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Marlin Holdings, Ltd., Marlin, Texas; to become a bank holding company by retaining 67.93 percent of the voting shares of Central Financial Bancorp, Inc., Lorena, Texas; and thereby indirectly retain shares of Central Delaware Financial Bancorp, Dover, Delaware; Lorena State Bank, Lorena, Texas; and Bank of Troy, Troy, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Central Coast Bancorp, Salinas, California; to acquire 100 percent of the voting shares of Cypress Coast Bank, Seaside, California.

Board of Governors of the Federal Reserve System, March 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7660 Filed 3–28–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 3, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 27, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7826 Filed 3–27–96; 11:18 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Placement of Commercial Antennas on Federal Property

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: On August 10, 1995, President Clinton signed an Executive Memorandum directing the heads of all departments and agencies to facilitate access to Federal property for the purpose of siting mobile services antennas. The General Services Administration, in coordination with other Government departments and

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

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Board of Governors of the Federal Reserve System, March 25, 1996.

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Deputy Secretary of the Board.

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Dated: March 27, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7826 Filed 3–27–96; 11:18 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Placement of Commercial Antennas on Federal Property

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: On August 10, 1995, President Clinton signed an Executive Memorandum directing the heads of all departments and agencies to facilitate access to Federal property for the purpose of siting mobile services antennas. The General Services Administration, in coordination with other Government departments and

agencies as well as wireless telecommunications industry representatives, has developed the following procedures in Attachment A. The President's memorandum and these procedures implement the requirements of section 704(c) of the Telecommunications Act of 1996, P.L. 104–104.

FOR FURTHER INFORMATION CONTACT: James Herbert, Office of Property Acquisition and Realty Services, Public Buildings Service, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, telephone 202–501–0376.

Dated: March 25, 1996.

David J. Barram,

Acting Administrator of General Services.

Attachment A—Government-Wide Procedures for Placing Commercial Antennas on Federal Properties

In accordance with section 704(c) of the Telecommunications Act of 1996, Public Law 104–104, and President Clinton's August 10, 1995, memorandum entitled "Facilitating Access to Federal Property for the Siting of Mobile Services Antennas" the following procedures shall be followed by Executive departments and agencies:

Guiding Principles

1. Requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department's or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question.

2. Upon request, and to the extent permitted by law and where practicable, executive departments and agencies shall make available Federal Government buildings and lands for the siting of mobile services antennas. This should be done in accordance with Federal, State and local laws and regulations, and consistent with national security concerns (including minimizing mutual electromagnetic interactions), public health and safety concerns, environmental and aesthetic concerns, preservation of historic buildings and monuments, protection of natural and cultural resources, protection of national park and wilderness values, protection of National Wildlife Refuge systems, and subject to any Federal requirements promulgated by the agency managing the facility and the Federal Communications Commission, the Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies.

3. Antennas on Federal buildings or land may not contain any advertising.

4. Federal property does not include lands held by the United States in trust for individual or Native American tribal governments.

5. Agencies shall retain discretion to reject inappropriate siting requests, and assure adequate protection of public property and timely removal of equipment and structures at the end of service.

6. All procedures and mechanisms adopted regarding access to Federal property shall be clear and simple so as to facilitate the efficient and rapid build out of the national wireless communications infrastructure.

7. Unless otherwise prohibited by or inconsistent with Federal law, agencies shall charge fees based on market value for siting antennas on Federal property and may use competitive procedures if not all applicants can be accommodated.

8. The siting of mobile services antennas should not be given priority over other authorized uses of Federal buildings or land.

9. All independent regulatory commissions and agencies are requested to comply with these procedures.

Implementing Actions

1. Each Executive department and agency which operates and controls real property under specific statutory authority is responsible individually for determining the programmatic impact of placing commercially owned antennas on their properties.

2. Each department and agency should review their rules, policies, and procedures for allowing commercial use of their properties and modify them as necessary to assure they fully support the siting of commercial antennas as provided in these procedures.

3. Each department and agency should assure that appropriate officials within local, regional, and national offices who are responsible for the siting of commercial mobile services antennas are aware of and support the President's directives on facilitating access to Federal property.

4. Preliminary decisions on the acceptability of proposed sitings should be rendered as soon as possible but no later than 60 days after receipt of a request. Denials of requests should provide the applicant with an explanation of the reasons for denial. Preliminary approvals should cite all conditions which must be met to render final approval. Final decisions should be rendered in a timely manner consistent with the degree of complexity of the case.

5. Firms and individuals interested in placing commercial mobile services antennas on Federal properties should contact the department or agency which has custody and control of the property. (Generally, Federal buildings and courthouses are controlled by the General Services Administration; military posts and bases, by the Department of Defense; Veterans' hospitals and clinics, by the Department of Veteran's Affairs; and, National Parks, by the Department of Interior.)

Below is a comprehensive listing of the offices in the headquarters of each property holding department and agency. Individuals and firms interested in placing antennas on specific Federally-owned properties should contact the appropriate office in writing indicating their interests, identify the property, and providing specific information on their proposal. These offices will advise applicants on specific application procedures/criteria, as well as appeals processes and refer them to local site managers to make determinations on suitability and other arrangements for leases, licenses, permits or other legal instruments for the siting of commercial antennas.

In the instances where the identity of the department or agency which has custody and control of a property is unknown, individuals and firms may contact the General Services Administration's Office of Real Property. This office maintains a listing of all properties owned by the Federal Government world-wide and will refer inquirers to the appropriate department or agency. Contact can be made by writing the Office of Real Property (MP), Room 1300, General Services Administration, 18th & F Streets, NW., Washington, DC 20405 or by telephone at (202) 501–0176. To assist in identifying the appropriate department or agency inquirers should provide the state, city/county, building/property name and mailing address of the property in question.

Agency Point of Contact for the Placement of Antennas on Federal Buildings

Federal Communications Commission, Operations Management and Services Division—1110B, Room 404, 1919 M Street, NW., Washington, DC 20554, (202) 418–1950

National Aeronautics & Space Administration, Facilities Engineering Division, NASA Headquarters, Code JX, 300 E Street, SW., Washington, DC 20546–0001, (202) 358–1090