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August 5, 1999

Working together for livable Oregon communities

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EXECUTIVE DIRECTOR
Richard C. Townsend

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Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: *Ex Parte Filing* in cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please reject the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antennas on a building roof and wires in a building, without permission of the building owner.

This rule preempts state and local laws, ordinances, building codes and deed restrictions affecting telecommunications antennas. The FCC lacks the authority to do this. It violates basic property rights - a landlord, city or condominium has the right to control who comes onto their property. Congress did not give the FCC the authority to condemn space for innumerous phone companies in every building in the country. The FCC also lacks the legal authority to preempt state and local laws. Zoning and building codes are clearly matters of state and local jurisdiction which under Federalism and the Tenth Amendment, the FCC cannot preempt.

Zoning and building codes are matters of local concern which protect public health safety and welfare, preserve property values and the character of local communities. For example, if antennas are not properly attached, they may blow over damaging the building, its inhabitants and passers-by. Also, if antennas are too heavy or too high, roofs may collapse, again jeopardizing human health and safety. This also creates a potential legal liability for all parties involved.

Zoning laws have been successfully applied for eighty years. Zoning has not yet impeded technological development, and it will not in the case of wireless either. This is not an issue warranting Federal action.

Again, public health, safety and welfare, preservation of property values and the character of local communities are essential core justifications for retaining local authority over the public rights of way. Local governments have had this authority for over a hundred years and it has not impeded technological development. In addition Congress has specifically prohibited the FCC from acting in this area.

The telephone providers' complaints about management of the public rights of way is clearly overstated, particularly since there have only been about a dozen court cases on this

(Over)

issue nationwide, after the 1996 Telecommunications Act. With 38,000 municipalities nationwide and thousands of phone companies, this number shows that the current system is working. Finally, it is important to note that the FCC has no more authority over state and local taxes, than Federal taxes.

For these reasons, please reject the proposed rule and take no action regarding local authority over public rights of way.

Sincerely,

Richard C. Townsend

Richard C. Townsend
Executive Director

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