R. SCOTT WHEELER
MAYOR

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TOWN OF ADDISON, TEXAS

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August 6, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Chairman Kennard:

As Mayor of the Town of Addison, I respectfully request the Commission *not* adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certificated to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof–all without the landlord's permission.

Such a rule would violate basic property rights allowing a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type–such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on

buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided.

Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

For these reasons please reject the proposed rule.

Sincerely,

R. Scott Wheeler
Mayor

cc:

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
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Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
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Ms. Magalie Roman Salas (two copies)
Secretary
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Mr. Jeffrey Steinberg
Wireless Telecommunications Bureau
Federal Communications Commission
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Mr. Joel Tauenblatt
Wireless Telecommunications Bureau
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R. Scott Wecker
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TO: (PLEASE PRINT) PHONE ( )

Chairman William Kennard and
Federal Communications Commission
445 12th Street SW
Washington DC 20554

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Robert S. Noe, Jr.
City Manager

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 11, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Chairman Kennard:

The City of Tamarac is opposed to the adoption of the rule proposed in the above-referenced cases. The proposed rule would allow any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certified to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof - all without the landlord's permission.

It is our understanding that the FCC lacks the authority to do this. It would violate basic property rights – a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The City has been advised that the FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type – such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by. The City of Tamarac is subject to continuing threat of hurricanes due to its geographical location in South Florida. To this end, the City's building and zoning codes are adequate to ensure

the proper placement of antennas on the roofs of buildings in our community. These codes have been carefully developed and established to address local needs and conditions.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns – which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity, no one wants a substation near their home.

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

On rights of way, local management of them is essential to protect public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overstated, as shown by the small number of court cases on this issue. For instance, only about a dozen cases nationwide have occurred in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies this number of cases supports the fact that the present system is working.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Very truly yours,

Robert S. Noe, Jr.

cc:

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Michael Powell
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