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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W. TW-A325
Washington, DC 20554

RE: Notice of Inquiry in WT Docket No. 99-217

Dear Ms. Salas:

The Government Finance Officers Association (GFOA) is responding to the Federal Communications Commission's (FCC) Notice of Inquiry regarding implementation of the local competition provisions contained in the Telecommunications Act of 1996. GFOA is a professional association representing over 14,000 state and local government officials and other public finance specialists involved in the disciplines encompassing public finance. We direct our comments specifically to state and local government right-of-way management issues.

The GFOA believes that the refinements to the regulatory responsibilities of the federal government and state and local governments brought about by the Telecommunications Act of 1996 (P.L.104-104) were intended to retain local decision-making as competition in the industry moves forward. No further preemption of state and local authority is warranted. The Act clearly limited the preemptive provisions impacting federalism, and the language preserves taxing authority and right-of-way management authority for state and local governments. As the provisions of the act are implemented, GFOA believes state and local government must retain their authority regarding the issuance of franchises, the determination of the appropriate kind and level of taxation, if any, and the management of their rights-of-way and appropriate compensation for their use.

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With regard to the Commission's publication of the Notice of Inquiry, it is both commendable and prudent to observe and assess the environment for competition in this era of heightened demand for telecommunications services and public rights-of-way, as the FCC has undertaken to do with this request for comments. However, the entrepreneurial preferences of particular providers, including those that may be conveyed under the guise of a petition for preemption, must not be allowed to influence or otherwise provide a basis for further restriction of local discretion in stewarding infrastructure investment and innovation in a competitively neutral atmosphere in which state and local governments have long played and will continue to play an appropriate role – that of managing limited public resources. Continued cooperation between governments and industry providers will speed the implementation of competitive, affordable telecommunications services envisioned by the Act.

Discussion

The proposed rule and notice of inquiry request comments on whether new regulations are needed to ensure access to private subscriber premises and to public rights-of-way to enhance telecommunications competition. Section 253 of the Federal Telecommunications Act makes clear that nothing in the Act affects the authority of local governments to manage public rights-of-way. Furthermore, nothing in the Act affects the authority of a local government to require fair and reasonable compensation from telecommunications providers on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way. At the same time, providers are assured that state and local governments may not impose legal requirements that directly or indirectly prohibit a firm from providing any interstate or intrastate telecommunications service.

In its first recommendation statement, the Commission's Local and State Advisory Committee pointed out that "state, local and FCC officials share the common goals of bringing true and effective competition in telecommunications services to all our citizens as quickly as possible while minimizing the adverse effects on other essential community needs, costs and interests." GFOA strongly supports this goal and notes that the expansion of technologies in the "new economy," the increasing demand for occupation

of rights-of-way, and the convergence of services offered by providers are elements that impact right-of-way management issues and require the careful and prompt consideration by local and state governments.

The Telecommunications Act of 1996 designates responsibilities for state and local governments, specifically their role in regulating public rights-of-way. Local and state governments have long been responsible for the management of the right-of-way and compensation for its use. Inherent in local right-of-way management is responsibility for public safety and community well-being, because citizens expect local leaders to ensure the safe and efficient use of the public rights-of-way. Such principles have been articulated by a task force of the National Association of Telecommunications Officers and Advisors (NATOA),[1] namely that:

- Local governments have a duty and an obligation to bear the costs of acquiring and maintaining public right-of-way;
- Commercial use of public property for private profit requires equitable, fair, and reasonable compensation for its use;
- Both public and private entities have a role to play in the delivery of advanced telecommunications services to all Americans; and
- Federal, state and local governments each have a role in ensuring the goals of the Telecommunications Act are achieved and each must respect the authority of the others.

Continued cooperation among the levels of government will facilitate the evolution of a competitive telecommunications industry in the new century, more rapidly bringing the benefits of competition and technological innovation to our communities. GFOA believes state and local governments must retain their authority regarding the issuance of franchises, the kind and level of taxation, if any, and the management of their rights-of-way and appropriate compensation for their use, whether for electric, gas, water,

[1] Local Government Principles Relating to Rights-of-Way & Ownership of Telecommunications Facilities, National Association of Telecommunications Officers and Advisors, 1998.

sewerage or telecommunications utilities. The recovery of administrative, degradation, inspection and enforcement costs incurred in managing public rights-of-way are legitimate responsibilities of local government. Commercial entities receive special benefits from the occupation of rights-of-way separate from a general public purpose, making appropriate and fair a government's application of reasonable compensation for use of the public resources.

The vision of bountiful communications services delivered to homes and desktops throughout the nation is an extraordinary and attainable effort. But this technical marvel is accomplished by very tangible infrastructure improvements including construction, traffic management planning, communications facilities siting, and other "bricks and mortar" components. In addition, deregulatory and competitive efforts in other utility areas, specifically electricity and natural gas, combined with telecommunications competition, increase the importance of effective right-of-way management in local communities. Examples of some of these issues include: management of utilities in new growth areas, unannounced construction in the right-of-way by unknown contractors, construction delays due to the need to move facilities, traffic disruptions, damage from street cuts, and return construction with new street cuts.

GFOA has observed a number of developments related to the implementation of local competition provisions of the 1996 act that bolster the notion that governmental entities and industry providers are cooperating to bring competition into the marketplace. Cooperation is occurring between agencies and among municipalities to share and disseminate information on innovative right-of-way management practices. For example, cities are disseminating model excavation documents covering administration, inspection, safety, and planning for municipalities and detailing permit information for firms interested in installing equipment within rights-of-way. Local governments are also developing new systems to map the location of telecommunications cables and track the status of installations and other occupations of right-of-way by utility contractors across hundreds of miles of streets. This information can be compared to data on street rehabilitation plans to coordinate excavations and prevent unnecessary street damage.

This not only saves taxpayer dollars but provides prompt information that telecommunications firms and other utility contractors can use to structure their proposals and schedules. In addition, municipalities can plan to minimize traffic conflicts or coordinate multiple projects within a single area.

GFOA encourages further dissemination of data and other information on the status of local competition. We note one anecdote as follows: A growing multi-service firm has entered the marketplace in the Northeast corridor as well as on the West Coast. It is rapidly bringing local phone service and other telecommunications services to tens of millions of Americans through agreements with both small cities and large metropolitan areas. It maintains that its network, when completed, will reach population areas comprising 40 percent of the nation's residential market, and its plans and timetables for providing service are being widely communicated to the residential market. This example indicates the potential competitive impact that even one new provider brings to the marketplace. It also indicates that market conditions may have guided the firm's decision to initiate its efforts in the two regions, supporting the idea that the pace of entry into telecommunications markets is not about perceived barriers to entry, but directly related to competitive approaches undertaken by telecommunications companies.

GFOA also notes the findings of a study completed by a Midwestern university which may provide some insight into right-of-way management and compensation.[2] With approximately two dozen municipalities responding, the study found that invasive right-of-way activities (e.g., underground installation and repair) were more likely to require permits, while fewer required permits for installation of poles, towers or aerial wires or cables. Excavation and administrative fees were the most common type of permits required. The study also found few costs incurred in managing public rights-of-way are fully recovered, and a majority of respondents recovered no costs related to general right-of-way maintenance, obstruction of traffic flow and access to local businesses, and environmental impacts. Of particular significance, the study found that utility

[2] Pricing the Use of Local Public Rights of Ways: The Development of a Compensation Model for Indiana Local Governments, Center for Urban Policy and Environment, Indiana University, February 1998.

respondents, including providers of cable, gas, electric, sewer, water and telecommunications, describe relations with local governments as generally free of conflict, although they did not agree with municipal assertions that excavations reduced the service lives of streets. GFOA supports further efforts to contribute to the body of knowledge on right-of-way management and user perspectives.

Regardless of the existence of assorted petitions that have been forwarded to the Commission by concerned telecommunications providers, state and local governments share the industry's desire to promote economic opportunity and business development in the communications sector of our economy. It is not in any governmental entity's interest to raise barriers to economic growth in our communities and business districts, as creation of a positive, open environment in which enterprise can thrive is a key objective of the relevant governmental policies. Therefore, the notion of erecting barriers to competition is not a premise befitting for the implementation issues governments and industry stakeholders are now engaging. Rather it is the challenging function of managing complex decisions regarding infrastructure improvement, public safety, deregulation, technology, market competition and other elements associated with the nation's transformation to the so-called "new economy" that governments and commercial providers together now face.

Conclusion

GFOA believes state and local government must retain their authority regarding the issuance of franchises, the determination of the appropriate kind and level of taxation, if any, and the management of their rights-of-way and appropriate compensation for their use. Continued cooperation by the levels of government will speed the implementation of competitive, affordable telecommunications services envisioned by the Act. We look forward to working with the Commission to share information, encourage competition, and ensure quality public services, all of which will contribute to a vibrant communications sector in our local and regional economies across the nation.

Sincerely,

Bert L. Waisanen
Assistant Director, Federal Liaison Center