

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TCI CABLEVISION OF)
OAKLAND COUNTY, INC.)
) File No. CSR-4790
Petition for Declaratory Ruling,)
Preemption and other relief)
pursuant to 47 U.S.C. §§ 541,)
544(e) and 253.)

JOINT MOTION TO DISMISS OR DENY

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William Malone
Tillman L. Lay
Kristin M. Neun
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
1225 19th Street, N.W., Suite 400
Washington, D.C. 20036
(202) 785-0600

Attorneys for PROTEC, the Michigan
Municipal League, the Michigan Townships
Association, the United States
Conference of Mayors, the National
League of Cities, the National
Association of Counties, the City of Los
Angeles, California, the City of
Chicago, Illinois, and the Michigan
Communities

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SUMMARY

TCI's Petition should be dismissed because it seeks relief the Commission has no jurisdiction to give under Section 253(c). Even if the Commission had jurisdiction, the Petition should be denied because it rests on a gross misreading of Sections 253, 621 and 624 and, in addition, fails to present facts justifying its claims.

All of TCI's arguments boil down to one central claim: TCI disagrees with the mechanism Troy has chosen to manage and receive compensation for right-of-way use by telecommunications providers, including cable operators that wish to provide telecommunications services. But as the language and legislative history of Section 253 make clear, the Commission's preemption authority under Section 253(d) does not extend to right-of-way management and compensation disputes under Section 253(c). Only the courts have jurisdiction over such disputes.

Moreover, leaving such disputes to courts is not only required by the statute, it also represents sound policy. Determination of whether a particular local right-of-way management or compensation requirement falls within the safe harbor of Section 253(c) will necessarily involve individualized inquiry into the facts and history of right-of-way management and compensation in the particular community involved, as well as state law issues relating to municipal right-of-way authority. Courts are far better suited to such individualized factual and state law inquiries than the Commission. And the Commission

lacks the resources to become embroiled in the myriad of individual, fact-specific and state-law specific disputes that would arise.

TCI's reliance on the amendments to Section 621 contained in Section 303 of the 1996 Act is also misplaced. By its terms the language in Section 621 purports only to limit requirements imposed in a Title VI franchise -- in other words, the Cable Act. Section 621 says nothing whatsoever about -- and in no way limits -- any non-Title VI authority a municipality may have under state or local law to regulate or franchise right-of-way use by telecommunications providers that also happen to be cable operators. Lest there be any doubt on this point, the Conference Report to the 1996 Act removes it, unequivocally stating that the amendments to Section 621 are not intended to limit local authority to manage and receive compensation for right-of-way use from telecommunications providers, including providers that are cable operators. Section 621(d)(2), left unchanged the 1996 Act, further confirms that conclusion, making clear that cable operators that provide telecommunications services are subject to state authority to regulate telecommunications services.

TCI's contrary reading of Section 621 would stand Section 253 on its head, entitling cable operators -- and only cable operators -- to be immune from local telecommunications franchise requirements. Such preferential treatment of one type of telecommunications provider -- cable operators -- is

inconsistent with the non-discrimination and competitive neutrality principles of Section 253(c).

TCI's Section 624(e) argument, like many of its other arguments, rests on a flawed factual premise that is laid bare in the attachments to TCI's Petition. They reveal that Troy has not denied TCI any permit to upgrade its cable television facilities; it has merely limited one permit (the other is pending) to cable television use. The reason is simple: The only franchise TCI has in Troy is for cable television. TCI is free to seek a telecommunications franchise in Troy, and there is not a shred of evidence that Troy would not grant TCI such a franchise. The "barrier," if any, that TCI faces is one it has chosen to fabricate itself by its own stubborn refusal even to apply for a telecommunications franchise in Troy.

Under these circumstances, TCI has no standing to seek relief. And even if it did, there is no justification for relief. If TCI wishes to provide telecommunications services, Troy is entitled to require TCI to abide by the same requirements its Telecommunications Ordinance imposes on other telecommunications providers.

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Introduction

PROTEC,¹ the Michigan Municipal League, the Michigan Townships Association, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, the City of Los Angeles, California, the City of Chicago, Illinois, and the Michigan Communities,² by their attorneys, and, where appropriate, on behalf of their members,

¹ The "Michigan Coalition to Protect Public Rights of Way From Telecommunications Encroachments" ("PROTEC") is a coalition of local governments in the State of Michigan whose mission is to preserve and protect the value of local taxpayers' substantial investment in local rights-of-ways through the planning and development of sound, lawful policies for local governments to implement. PROTEC's Board of Directors is comprised of representatives from the cities of Dearborn, Livonia, and Southfield, Michigan.

² The "Michigan Communities" are 187 cities and townships in the State of Michigan. They are listed in Exhibit 1 to this Joint Motion.

hereby file a motion to dismiss or deny relief with respect to TCI Cablevision of Oakland County, Inc.'s Petition for Declaratory Ruling, Preemption and other relief pursuant to 47 U.S.C. §§ 541, 544(e) and 253, filed July 10, 1996 ("TCI Petition"). The joint movants are local governments and associations of local governments that seek to preserve their rights, as recognized in Sections 253(c) and 303 of the Telecommunications Act of 1996 ("1996 Act"), to manage their public rights-of-way and to obtain fair and reasonable compensation from telecommunications providers for their use of those rights-of-way, on a competitively neutral and non-discriminatory basis.

The Commission should deny TCI's Petition because, when carefully analyzed, it seeks relief the Commission has no jurisdiction to give, and even if the Commission did have such jurisdiction, the Petition fails to present any substantial issue to invoke the Commission's discretion to issue a declaratory ruling under Section 1.2 of the Commission's Rules. TCI's Petition falters at the threshold, because the questions it seeks to have resolved are not properly presented to the Commission, both as a matter of law and on the facts presented.

Under applicable precedent,³ the issuance of a declaratory ruling is an exercise of discretion by an administrative agency.

³ See Yakima Valley Cablevision, Inc. v. FCC, 794 F.2d 737 (D.C. Cir. 1986); see also Request for Declaratory Ruling by Harry Furgatch, Staff Ruling, 2 FCC Rcd 1656 (1987) (citing Yale Broadcasting Co., 478 F.2d 594, 602 (1973), cert. denied, 414 U.S. 914 (1973)) ("Staff Ruling").

Such a ruling should not be issued where, as here, the Commission's jurisdiction is at best questionable and, in addition, only hypothetical legal questions are presented. Because TCI's Petition fails this threshold test, it should be dismissed.

I. SUBSECTIONS 253(c) AND (d) DEPRIVE THE COMMISSION OF JURISDICTION OVER STATE AND LOCAL REQUIREMENTS RELATED TO MANAGEMENT, OR COMPENSATION FOR THE USE, OF THE PUBLIC RIGHT-OF-WAY.

A. The Commission's Preemptive Powers Under Section 253(d) Do Not Apply To Section 253(c), And Courts Are Given Exclusive Jurisdiction Over Section 253(c) Disputes.

In seeking to apply § 253(d)'s preemption provisions to Troy's Telecommunications Ordinance and permitting process, TCI urges an interpretation of Section 253 that is flatly inconsistent both with that Section's express terms and its legislative history. In fact, the Commission's authority under Section 253(d) does not extend to disputes arising under Section 253(c) concerning local right-of-way compensation or management - and that is precisely what TCI's Petition is. The statute leaves such disputes exclusively to the courts.

That the Commission's preemptive power under Section 253(d) does not extend to disputes like the one TCI seeks to raise here is obvious from the internal structure of Section 253. Section 253(a) provides:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Sections 253(b) and (c) carve out two different "safe harbors" from Section 253(a). By their terms, both of these safe harbors override subsection (a). Subsection (b) exempts from the scope of subsection (a) state law requirements relating to universal service, public safety and welfare, and consumer protection:

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Subsection (c) creates an independent and separate safe harbor for state and local requirements concerning public rights-of-way that overrides subsection (a). That much is clear from the language:

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government. (emphasis supplied)

The Commission's authority under subsection (d) with respect to subsections (b) and (c), however, differs dramatically. Section 253(d), by its terms, authorizes the Commission to preempt state and local requirements that violate subsection (a) or (b) of that Section. Section 253(d), however, excludes subsection (c) from the Commission's subsection (d) preemption authority. Thus, the Commission has no authority under subsection (d) to preempt state or local requirements relating to

management of or compensation for the public rights-of-way. Those disputes are left to the courts, not the Commission.

"Nothing" in Section 253, including subsections (a) and (d), affects the state and local government rights affirmed in subsection (c). Thus, before one can reach any question as to whether a particular state or local requirement -- like Troy's Telecommunications Ordinance here -- might violate subsection (a), one must first determine whether such a state or local requirement falls within the scope of the subsection (c) safe harbor. If so, subsection (a) is inapplicable to the requirement, and the Commission has no jurisdiction under subsection (d) to make a determination based on subsection (c).

Nor does the Commission have jurisdiction even to determine whether the requirements of Section 253(c) have been satisfied -- for example, whether compensation charged by a municipality is "fair and reasonable" or whether right-of-way management or compensation requirements are exercised on a "competitively neutral and nondiscriminatory basis." The legislative history, as discussed below, leaves no doubt that Congress intended that all Section 253(c) disputes be left to the courts, not the Commission.

Subsection 253(d), the preemption provision, was added in conference, based on Section 254 of the Senate Bill.⁴ In the

⁴ H.R. CONF. REP. NO. 458, 104th Cong., 2d Sess. 126-27 (1996). The House provision did not contain any preemption provision at all. Thus, the history of the provision must be found in the Senate bill, S. 652, rather than in the House.

Senate, Section 254(d), as originally proposed, contained a sweeping preemption provision that did not exclude subsection (c) from its coverage. After a proposed amendment to remove the subsection (d) preemption provision entirely, and after substantial debate on the Senate floor, however, a compromise amendment, offered by Senator Gorton (the "Gorton Amendment"), was adopted to preserve state and local authority over management of and compensation for the public rights-of-way. The Gorton Amendment, adopted by unanimous voice vote, revised subsection (d) to clarify that subsection (c) disputes, unlike those under subsection (b), would not be subject to FCC preemption authority under subsection (d).

Senator Gorton, the author of the successful compromise amendment, stated:

There is no preemption . . . for subsection (c) which is entitled, "Local Government Authority," and which preserves to local governments control over their public right of way. It accepts the proposition from [Senators Feinstein and Kempthorne] that these local powers should be retained locally, that any challenge to them take place in the Federal district court in that locality and that the Federal Communications Commission not be able to preempt such actions.⁵

The intent of Congress to reject any implicit FCC preemptive authority over local right-of-way issues is further confirmed by the Conference Report discussion of Section 601 of the 1996 Act:

The conference agreement adopts the House provision [under Section 601] stating that the bill does not have any effect on any other Federal, State, or local law unless the bill expressly so provides. This provision

⁵ 141 Cong. Rec. S 8213 (Daily Ed. June 13, 1995) (remarks of Sen. Gorton) (emphasis added).

prevents affected parties from asserting that the bill impliedly preempts other laws.⁶

Thus, the Commission's subsection (d) preemptive power can come into play only where subsection (c) does not apply, and the courts, not the Commission, must determine whether subsection (c) applies. Subsection (c) takes the Commission completely out of the business of regulating disputes over state and local right-of-way management and compensation requirements. The Commission must therefore reject TCI's patently incorrect assertion that the language of §253 somehow extends FCC preemptive authority into matters that are directly excluded under subsection (c).

B. The Commission Has No Authority To Preempt the Troy Telecommunications Ordinance, and Even If It Did, TCI's Attack Upon the Ordinance Is Groundless.

TCI's Petition is substantively dedicated to arguing that Troy is somehow exceeding its authority to manage the public rights-of-way. TCI begrudgingly concedes that Troy "retains some authority to manage the use of its right-of-way by telecommunications providers" (TCI Petition at 13, 15 & 18). The gist of TCI's claim is that TCI would prefer to be subject only to Troy's Utility Placement Ordinance and not Troy's new Telecommunications Ordinance. It would, however, be both unwise and impossible for the Commission to engage now in the process of deciding exactly what communities can and cannot require in a general telecommunications ordinance, even assuming the Commission had some jurisdiction to do so.

⁶ H.R. CONF. REP. NO. 458, 104th Cong., 2d. Sess., 201 (1996). Section 601 has been codified at 47 U.S.C. § 152 (note).

Cities, like the Commission, are in the process of adjusting their local ordinances to bring them into compliance with both the requirements and the spirit of the 1996 Telecommunications Act. As part of this process, some cities are requiring that entities obtain a franchise for each class of service (e.g., cable/telecommunications/OVS) that the entity may wish to provide using public rights-of-way. While at first it may seem more logical to issue a single franchise for all services, such a "one franchise" approach could have the disadvantage of mixing cable and telecommunications franchises and requirements, creating questions as to whether particular obligations are imposed under Title VI authority or under some other authority.⁷

Issuing more than one franchise may help avoid jurisdictional questions that could result because of differences in the allocation of state and local regulatory responsibilities between cable services and telecommunications services; it also may help ensure that similarly situated providers are being treated similarly and that providers cannot obtain competitive advantages by, e.g., applying for a cable franchise, and then building a telecommunications system without paying the same compensation for use of the rights-of-way by that system that is paid by other similarly situated telecommunications providers.

⁷ For example, should a telephone provider who wishes to renew its telephone franchise have to agree to the standards that might apply should it ever provide cable service (including, for example, PEG access requirements)? Or does it make more sense to issue a separate franchise at the time the provider begins to construct facilities for cable services?

Likewise, some communities may find (just as the Commission has found for purposes of its Title II and III licensing authority) that the appropriate time to require a franchise is prior to the construction of the relevant facilities.

The franchising process is often coupled with a permitting process, which is designed to ensure that particular types of construction at particular locations (boring, placement of facilities in trenches, cuts across intersections) are performed properly and quickly. Permits are often limited to discrete areas, for particular periods, for particular types of work. Such distinctions between general requirements for use of the right-of-way (as may be imposed in a franchise) and specific requirements for individual work projects that apply where appropriate (through permitting) are not unusual. As the Commission is undoubtedly aware, many pole attachment contracts set out general conditions for pole use, but then require that specific applications be made for uses of particular poles; a general fee may be imposed through the pole attachment contract for the use of each pole, while a special fee is imposed for particular applications to cover "make-ready" costs, and to ensure that the particular installation conforms to applicable requirements. Similarly, a franchise+permitting approach allows a community to establish general requirements and specific requirements as necessary -- and may ultimately prove less time-consuming than trying to manage right-of-way use through thousands of individual permits.

Of course, the approach described above is not the only possible approach, but it is one consistent with the 1996 Act, and it is one that may, in particular municipalities, best rationalize existing local and state law statutory, constitutional, charter and permitting practices. Certainly TCI has shown no reason why the approach it argues should apply (essentially a permit-only approach) is a wise national approach to right-of-way management. As we show below, TCI also has certainly not shown that the relief it seeks is at all necessary to provide TCI access to rights-of-way in Troy to provide telecommunications services.

There is also no question that issues of immense importance to local governments and their citizens are at stake. At least implicit in the 1996 Telecommunications Act is the assumption that more entities may be using the rights-of-way than have used the rights-of-way in the past. Old practices may well prove inadequate to rationally handle the new burdens that are placed on the right-of-way by multiple new users. Placement of facilities in the rights-of-way causes significant damage to very expensive infrastructure which is the lifeblood of any community. Different communities have devised different procedures for protecting the right-of-way, which may vary significantly depending on the geography of a particular locality, as well as other factors. These approaches are designed to reflect local circumstances, state laws, constitutions and charters, and once again, there is little reason for the Commission to suppose it

can or should decide what the best method for protecting the right-of-way might be.⁸ The Commission is not in a position to write a national local franchising ordinance, and should avoid doing so.

The absence of support for TCI's claims with respect to the "management" issue is exceeded only by the lack of support for the relief that TCI is seeking, which appears mainly aimed at asking the Commission to limit Troy's compensation to recoupment of the cost of managing the right-of-way. The compensation issue need not be addressed given the showing made in TCI's brief, and cannot be addressed, given the limits on the FCC's jurisdiction under Section 253(c). The Telecommunications Act is phrased so that Troy has separate rights to manage the right-of-way, and to receive "fair and reasonable compensation" for TCI's use of rights-of-way to provide telecommunications services. This right was explicitly preserved in Section 253(c) and (as we shall see in Part II below) Section 621, as amended by Section 303 of the 1996 Act.

⁸The Commission would undoubtedly be upset if a provider dug up the street in front of 1919 M Street, cutting off access to the building, and collapsing part of the roadway because the provider chose to use incompetent workmen. We doubt that Commission employees would be satisfied if they were expected to suffer lack of access for a significant period while the City attempted to draw on a performance bond. The danger of a Commission-dictated national rights-of-way management plan is that it will leave cities unable to respond effectively to legitimate problems; the Commission, with no experience in roadway management, ought to be reluctant to assume that it is familiar with the problems facing municipalities.

TCI's argument rests on the mistaken premise that a city's right to "fair and reasonable compensation" under both Sections 253(c) and 621 is limited to recoupment of a city's costs of managing and maintaining the right-of-way (TCI Petition at 15 & 19).⁹ Mere recoupment of expenses is hardly "fair and reasonable compensation." No one would seriously claim, for example, that fair and reasonable compensation to a private property owner is

⁹ TCI cites only two sources for this proposition; one inapposite and the other completely mischaracterized. TCI first cites American Tel. & Tel. Co. v. Village of Arlington Heights, 620 N.E.2d 1040, 1047 (Ill. 1993) ("AT&T"). As an initial matter, TCI misconstrues the AT&T case; as the court made clear, AT&T did "not seek to garner revenue from the use of city streets" and thus, was not engaged in a "franchise-type business" for "the use of city streets." 620 N.E.2d at 1044. Moreover, as an Illinois law case, AT&T is hardly a reasonable basis on which the Commission could make any decision construing Troy's right-of-way authority under Michigan law, much less any national policy. Finally, the AT&T case is at best a minority viewpoint: both the Supreme Court and the precedent in most states holds that franchise fees are rent for use of rights-of-way and, like rent, franchise fees are not limited to reimbursement of the landlord's costs. See, e.g., City of St. Louis v. Western Union Tel. Co., 148 U.S. 92, 97 (1893); Pacific Tel. & Tel. Co. v. City of Los Angeles, 44 Cal. 2d 272, 283, 282 P.2d 36, 43 (1955).

Obviously grasping at straws, TCI also cites the Commission's First Reconsideration Order in the Rate Regulation proceeding, 9 FCC Rcd 4316, 4367 (¶¶ 140-41) (1994) for the proposition that "[r]evenue based fees are not 'compensation . . . for the use of public rights-of-way'" (TCI Petition at 19 & n.46). But paragraphs 140-41 of the First Reconsideration Order say no such thing. The edited quote TCI uses was nothing but a description of an argument by InterMedia in that proceeding (see ¶140), an argument that the Commission proceeded to reject in the next paragraph (¶141). To establish the utter nonsense of TCI's claim that revenue-based fees are somehow not compensation for right-of-way use, one need go no further than the Cable Act, which allows revenue-based franchise fees as compensation for right-of-way use. See 47 U.S.C. §542(a); H Rep. No. 934, 98th Cong., 2d Sess. reprinted in 1984 U.S.C.C.A.N. 4655, 4663 (cable operator assessed a franchise fee "for the operator's use of public ways") (emphasis added).

restricted to recoupment of the owner's cost of managing a tenant's use of the property.¹⁰ The same is true for public property: the government is entitled to fair compensation for the value of its property, and that value is not limited to cost recoupment, but can be measured by revenue-based fees.¹¹ Had Congress intended to limit fees to "management of the right-of-way and recoupment of the costs of managing the right-of-way," it could easily have said so, and it did not.

In any case, besides asking the Commission to resolve issues that it has no authority to resolve under Section 253(c), TCI appears to be attempting to lure the Commission into issues that the FCC does not have the competence as a factual matter and as a matter of state law, to resolve here. Thus, TCI argues (at 14-15) that Troy's Utility Placement Ordinance "remedied right-of-way management concerns" and that Troy is entitled only to recover the "costs for managing and maintaining the rights-of-way" -- costs which TCI claims are covered by the fee schedule in

¹⁰ Certainly, the FCC has not restricted the fees it obtains through spectrum auctions to the FCC's cost of managing spectrum use, and the Commission has never suggested that the auction amounts paid are somehow inappropriate compensation for use of a public good, or that auctioning spectrum is a barrier to entry.

¹¹ See, e.g., Pacific Tel. & Tel. Co. v. City of Los Angeles, 282 P.2d at 43; Telesat Cablevision, Inc. v. City of Riviera Beach, 773 F.Supp. 383, 407 (S.D. Fla. 1991); Group W Cable, Inc. v. City of Santa Cruz, 669 F.Supp. 954, 962-63, 972-74 (N.D. Cal. 1987), further proceedings, 679 F.Supp. 977, 979 (1988); Erie Telecommunications v. City of Erie, 659 F.Supp. 580, 595 (W.D. Pa. 1987), aff'd on other grounds, 853 F.2d 1084 (3d Cir. 1988) (all upholding revenue-based municipal franchise fees as fair compensation for use of rights-of-way).

the Utility Placement Ordinance. This is nothing less than a request that the Commission lock current right-of-way management compensation requirements in place. Yet nothing in Section 253(c) (or Section 621) remotely suggests that the manner in which a community manages and receives compensation for its right-of-way is somehow locked into stone -- that having adopted the Utility Placement Ordinance, Troy is somehow foreclosed from ever adopting new ordinances or revising how it addresses right-of-way management and compensation issues. In fact, Troy's decision to revisit these issues in light of the impending 1996 Act was perfectly appropriate to ensure that, overall, there was fair and reasonable compensation for use of the rights-of-way by all.

Perhaps most importantly, the issue TCI tries to lure the Commission into addressing -- what is "fair and reasonable compensation" under Section 253(c) -- is an issue that the Commission should not and need not address, even if one assumed that Commission had the authority to address it (which it does not). Whether compensation is fair and reasonable in a particular situation will typically require consideration of a variety of factors that vary from community to community (not the least of which would be whether, on the particular facts of a particular case, the compensation plan fairly represents the value of the rights-of-way and is non-discriminatory). The decision is likely to be affected by community-specific facts concerning right-of-way value, by a particular community's

existing franchise contracts, by state law, by local charters and by the different regulatory obligations assumed by particular providers. Not only is Commission consideration of those matters prohibited by the statute, it ought to be avoided by the Commission in any case. Were the Commission to become the arbiter of Section 253(c) disputes, it would have to resolve individual factual and state law matters relating to thousands of different communities across the nation. That is a burden the Commission lacks the resources and state law expertise to carry. And that is why Congress properly left those disputes to the courts.

II. TCI'S CLAIM THAT TROY'S CONDUCT HAS VIOLATED SECTION 621(b) IS BASED ON A GROSS MISREADING OF THE STATUTE.

TCI'S Petition also fails to properly invoke Section 621(b) (3), added by the 1996 Act. TCI completely misconstrues that provision, and in addition, TCI's argument rests on a completely unsupported, and mistaken, factual assumption: Troy has never conditioned TCI's provision of telecommunications as a Title VI cable operator, but has only exercised the authority it possesses under state law, including authority that was specifically preserved to it under Sections 621(b) (3) and 621(d) (2), to manage and receive compensation for telecommunications providers' use of its rights-of-way.

A. Section 621, as amended by Section 303 of the 1996 Act, Preserves Local Right-of-Way Authority Over Telecommunications.

TCI asserts that Section 621, as amended by Section 303 of the 1996 Act, "explicitly removes telecommunications 'franchising' from local governing officials." TCI Petition at 11. Much like TCI's Section 253 arguments discussed above, this assertion is belied by the language and legislative history of Section 303. For that reason, TCI's petition does not make out a violation of Section 621(b).

TCI completely misrepresents the meaning of new Subsection 621(b)(3). On its face, Section 621(b)(3)(B) merely prohibits a Title VI "franchising authority" from "imposing any requirement under this title [i.e., Title VI, the Cable Act] that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator" TCI inexplicably ignores the fact that by its terms, the new language only places limits on requirements imposed "under this title" -- in other words, under a cable franchise issued in accord with Title VI of the Cable Act. The provision says nothing whatsoever about -- and in no way limits -- any non-Title VI authority a state or local government may have under state law to regulate or franchise the provision of telecommunication services by cable operators.

This means that, to the extent that a local government, such as Troy, has authority under state and local law -- independent of its Title VI cable franchising authority -- to franchise or to

impose reasonable requirements on telecommunications right-of-way users (whether those users also happen to be cable operators or not), Section 621 places no obstacle in the way of a local government's ability to do so.

Lest there be any doubt on this point, the Conference Report removes it, making clear that cable operators wishing to provide telecommunications services are in no way immune from any local right-of-way compensation or management requirements outside of Title VI:

The conferees intend that, to the extent permissible under State and local law, telecommunications services, including those provided by a cable company, shall be subject to the authority of a local government to, in a non-discriminatory and competitively neutral way, manage its public rights-of-way and charge fair and reasonable fees.¹²

In other words, TCI's claim that Troy's non-Title VI local right-of-way management or compensation requirements inhibit its ability to provide telecommunication services must be treated just like any other "barrier to entry" claim under Section 253(c). And as we have shown in Part I above, the Commission has no jurisdiction over § 253(c) disputes.

In addition, TCI's Petition completely ignores the specific reservation of state power over telecommunications services provided by cable operators that is incorporated in Section 621(d)(2). That provision states "[n]othing in this title [i.e., Title VI] shall be construed to affect the authority of any State

¹² H.R. CONF. REP. NO. 458, 104th Cong. 2d. Sess., 180 (1996).

to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis."¹³ Such language, left untouched by the 1996 Act, further confirms the legislative history of Section 303 of the 1996 Act: nothing in Title VI (including Section 621(b)(3)) is intended to limit state or local authority to regulate a cable operator's provision of any telecommunications service outside of Title VI.

Thus, contrary to TCI's assertions, Troy is fully within its power, in accordance with the 1996 Act, to adopt an ordinance to require telecommunications providers to obtain a telecommunications franchise to use its rights-of-way to provide telecommunication services, and to apply that ordinance to any cable operator that provides telecommunications services. TCI is simply wrong in suggesting that the 1996 Act somehow preempts Troy's Telecommunications Ordinance.

B. TCI's Petition Fails To Factually Support Its Assertions that the City Has Exceeded its Authority Under Section 621.

In addition to being wrong as a matter of law in its construction of Section 621, TCI's petition also is fatally flawed due to the lack of any factual support for its claims. Upon its review of TCI's Royal Oak and Livernois Road

¹³ Any municipality acting under state authority, as the City of Troy does as a political subdivision of the State of Michigan, see, e.g., Tally v. City of Detroit, 220 N.W.2d 778, 54 Mich. App. 328, on rehearing 227 N.W.2d 214, 58 Mich. App. 261 (1974), would certainly be included within the definition of "State" in this provision.

applications for permits to lay fiber, Troy neither required TCI qua cable operator to provide telecommunications services nor prohibited TCI qua cable operator from providing telecommunications services. It is equally clear from TCI's Petition that the City neither required TCI to provide any "telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal or a transfer of a franchise," nor imposed any requirement under Title VI "that has the purpose or effect of prohibiting, limiting, restricting or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof" in violation of Section 621(b).

Nor has Troy, as TCI asserts, limited construction of TCI's cable plant with fiber optic cable merely because of its 'potential' use as a carrier of telecommunications services.¹⁴ Given the broad wording TCI used in its permit applications and the circumstances surrounding such applications, Troy had every reason to question that TCI's actions might be aimed at circumventing Troy's Telecommunication's Ordinance.¹⁵

¹⁴ In fact, given TCI's admission that the Livernois Road application was in fact granted and the Royal Oak applications are under review for the unusual routing TCI has selected, it is clear from TCI's own Petition that the City has not in fact limited construction of TCI's cable plant.

¹⁵ On its face, TCI's Livernois Road application was not related to cable television: it clearly requested a permit to "place new aerial cable (coax & fiber) on existing poles for telecommunications." TCI Petition, Exhibit 9. Further, the Royal Oak application became a source of concern to Troy due to the highly unusual and indirect routing of fiber optic cable through non-residential areas, which raised questions about the

Thus, to ensure TCI's compliance with the Telecommunication Ordinance, Troy issued the Livernois Road permit with an endorsement to make clear that the permit was restricted to the uses for which it was authorized under Troy's Cable Ordinance.¹⁶ Just as TCI would not be permitted to use its cable franchise authorization to obtain permits to install gas lines, so too TCI is not permitted under applicable law to use its cable franchise to obtain permits for any other non-cable purposes for which it has not received a franchise.

Finally, Troy has never prohibited TCI from applying for a telecommunications franchise under the City's Telecommunication Ordinance and thereafter obtaining the permits necessary to provide telecommunications services in the City. Indeed, TCI's Petition does not claim that TCI has been prohibited from obtaining such a franchise. Rather, TCI has simply not bothered -- or has stubbornly refused -- to do so. But TCI cannot fabricate its own self-imposed "barrier to entry" by refusing to

reasons for such routing and the uses of such fiber. TCI Petition, Exhibit 11. TCI itself admits that it has had to submit a second application in order to explain its unusual routing. TCI Petition at fn. 16. That application, filed May 6, 1996, is now under consideration by Troy.

¹⁶ Further, assuming the veracity of TCI's declaration attached to its Petition asserting that it does not plan to use the Royal Oak permit for other than cable at this time, and in light of the January 23, 1995 agreement wherein TCI specifically agreed to similar endorsement language, TCI's current objections to the manner in which the permits were issued (*i.e.*, with such endorsement) appear to be a blatant attempt to find a means to circumvent Troy's laws.

comply with laws and then complaining about the consequences of its failure to do so.

C. The 1996 Act Does Not Authorize TCI to By-Pass Local Procedures for Management of and Compensation for Rights-of-Way.

Ultimately, TCI's arguments about both Section 253 and Section 621 fail because neither the statutory language of, nor the legislative history relating to, either provision supports TCI's overly narrow interpretation of right-of-way management and compensation. The statutory language and legislative history also put the lie to TCI's effort to concoct preemption of non-Title VI franchising requirements like those contained in the Troy Telecommunications Ordinance. As shown above, both Section 253 and Section 621 preserve a local government's right to manage and receive compensation for its rights-of-way. Neither preempts use of non-Title VI franchise requirements applied to telecommunications providers using local rights-of-way, including cable operators that also happen to provide telecommunication services.

TCI seems unwilling to recognize that a "franchise" is precisely the instrument through which a local government, such as Troy, manages access to, and secures compensation for, its rights-of-way. Local law typically requires that only those holding franchises are eligible to obtain street and right-of-way permits.¹⁷ TCI's Petition seems to advocate the notion that

¹⁷ TCI seems to acknowledge as much when it admits that Troy's Utility Placement Ordinance applies only to "franchised providers" (TCI Petition at 16). What TCI overlooks is that it

anyone desiring to provide telecommunications services should be entitled to seek a right-of-way permit, bypassing completely the telecommunications franchise process that Troy uses to determine who is eligible to use its property and therefore, to obtain such a permit. Thus, TCI's claimed preemption of local telecommunications franchising would deprive local governments of the ability to manage and receive compensation for their rights-of-way -- a power explicitly reserved to local governments in the 1996 Act.

In fact, in the recently released Third Report and Order and Second Order on Reconsideration in the Open Video Systems proceeding, the Commission rejected the notion that preemption of Title VI franchises preempts state and local non-Title VI franchise authority: "if, for example, a state or local government characterizes permission to use the public rights-of-way as a 'franchise', such franchises are not preempted so long as they are issued in a non-discriminatory and competitively neutral manner."¹⁸ The Commission further stated that "[m]anagement of the rights-of-way is a traditional local

has no franchise to provide telecommunications services. Although TCI has a cable franchise, it is no more entitled to use its cable franchise to obtain permits to construct telecommunications facilities than the gas company is entitled to use its gas franchise to construct telecommunications facilities.

¹⁸ Third Report and Order and Second Order on Reconsideration on Open Video Systems, CS Docket No. 96-46, ¶ 194 (August 8, 1996) ("OVS Third Report and Order").

government function. Local governments should be able to manage the rights-of-way in their usual fashion"19

Moreover, in suggesting that Section 621(b)(3)(B) somehow allows cable operators -- and only cable operators -- to escape local non-Title VI telecommunications franchise requirements, TCI seeks the very kind of preferential treatment that Section 253 was intended to prevent. TCI's construction of Section 621(b)(3) would result in cable operators receiving preferential treatment over other non-cable telecommunications providers that clearly could be made subject to such local right-of-way compensation and management requirements under Section 253(c). That result, however, would be inconsistent with the non-discrimination requirement in Section 253(c). TCI also mistakenly suggests that local governments, such as Troy, must apply management requirements "equally" -- a far more inflexible standard than the "nondiscriminatory and competitively neutral" standard contained in the 1996 Act.²⁰ As the Commission recently made clear, "nondiscriminatory" does not necessarily mean "equal".²¹

TCI's preemption bid, however, would result in clear discrimination. Non-cable telecommunications providers could be made subject to a telecommunication franchise requirement.

¹⁹ OVS Third Report and Order at ¶ 197.

²⁰ See e.g. TCI Petition at 18.

²¹ In its OVS Third Report and Order, the Commission acknowledges that "'nondiscriminatory and competitively neutral' treatment does not necessarily mean 'equal' treatment." OVS Third Report and Order, ¶ 195.

Accordingly to TCI, however, cable operators like itself that wish to provide telecommunications service are a special, privileged class of telecommunications provider that, despite local laws to the contrary, are not required to obtain a telecommunications franchise to be eligible for a permit to construct telecommunications facilities. Were Troy to accommodate TCI in this manner, it would likely be subject to court claims by others that it had violated Section 253(c) by giving preferential treatment to TCI.

III. TROY'S ACTIONS DO NOT CONSTITUTE A VIOLATION OF SECTION 624(e) OF THE CABLE ACT.

TCI admits that Troy issued the Livernois Road permit, and it fails to provide evidence that Troy rejected the Royal Oak permit.²² Thus, TCI defeats its own argument that Troy has, through its denial of these permits, dictated transmission technology and technical standards in violation of Section 624(e) as amended.²³ Troy could not have violated Section 624(e), since Troy never in fact denied or rejected TCI's permit applications to the extent such permits applied to the installation of fiber optic cable for the sole purpose of providing a cable system

²² Actually, the TCI Petition claims once again in error that the permits were denied on the grounds that the company desired to use fiber and not coaxial cable. TCI Petition at 8-9, fn. 16. As noted above, the TCI's Petition offers no support for this claim. It was TCI, not Troy, that labelled its permits as seeking to provide "telecommunications" services.

²³ TCI Petition at 9, fn 16 (resubmitting the Royal Oak application for purposes of clarifying its indirect routing). Communications Act of 1934, § 624(e), as amended.

upgrade. Nor has the City imposed technical performance standards on TCI's cable franchise. Section 624(e) relates to cable franchises, not telecommunication franchises. In any event, the City's telecommunications franchise requirement is technology-neutral. Thus, TCI's argument lacks any basis in fact or in law.

IV. TCI LACKS STANDING TO CHALLENGE THE VALIDITY OF TROY'S TELECOMMUNICATIONS ORDINANCE, SINCE TCI HAS NOT APPLIED FOR A TELECOMMUNICATIONS FRANCHISE, MUCH LESS ALLEGED THAT IT HAS BEEN PROHIBITED FROM OBTAINING SUCH A FRANCHISE WITHIN THE MEANING OF SECTION 253(a).

Even if TCI's hypothetical claims held water (and they do not), TCI cannot raise them here. A party may only invoke the Commission's process if it is in the position to benefit from the changes it advocates.²⁴ Since TCI has not even bothered to apply for a telecommunications franchise in Troy, nor alleged that it is prohibited from obtaining one, TCI lacks standing to challenge Troy's Telecommunications Ordinance. As delineated by courts in cases involving the Commission, a petitioner must be able to demonstrate that it has been injured by the action that it is appealing.²⁵ In Orange Park Florida, the Court required the petitioner to have "specified a concrete, economic interest that

²⁴ See Lujan v. Defenders of Wildlife, 112 S.Ct. 2130 (1992).

²⁵ See Garden State Broadcasting Ltd. v. FCC, 996 F.2d 386 (D.C. Cir. 1993); Aeronautical Radio, Inc. v. FCC, 983 F.2d 275, (D.C. Cir. 1993).

has been perceptibly damaged by the Commission's award."²⁶ Furthermore, in Lujan v. Defenders of Wildlife, the Supreme Court held that not only must there be evidence of an injury fairly related to the challenged action but there must also be a strong likelihood that such injury will be redressed in a favorable decision.²⁷ Likewise, the Commission itself has recognized the "injury" requirement in ruling on issues related to standing.²⁸ In G & S Television Network, the Commission stated that "[a] petition to deny must demonstrate a direct or threatened 'distinct and palpable injury'" ²⁹

Since TCI has failed even to try to seek a franchise under Troy's Telecommunications Ordinance, TCI cannot demonstrate that it has sustained any injury that is traceable to that Ordinance.³⁰ Consequently, TCI cannot even reach the second prong of the Lujan test regarding whether such injury could be

²⁶ Orange Park Florida Television v. F.C.C., 811 F.2d 664, 673 (D.C.Cir. 1987).

²⁷ Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992).

²⁸ See G & S Television Network, Inc., 7 F.C.C. Rcd 4509 (1992) (citing Sierra Club v. Morton, 405 U.S. 727, 733 (1972)). See also Miami Valley Broadcasting Corp., 78 F.C.C.2d 684 (April 28, 1980) (standing requires that petitioner has sustained a clear injury).

²⁹ G & S Television Network, Inc., 7 F.C.C. Rcd 4509 (1992). See also, National Broadcasting Co., 37 FCC 2d 897, 898 (1972) (standing requires direct injury).

³⁰ See TCI Petition at 7, fn. 9.

cured.³¹ Until such time as TCI can demonstrate that (1) it has sustained some injury under Troy's Telecommunications Ordinance; and (2) that such injury is likely to be cured by a favorable Commission decision, TCI does not have standing to challenge that Telecommunications Ordinance.³²

In addition, TCI cannot claim that it has been prohibited by the Telecommunications Ordinance from providing "any interstate or intrastate telecommunications service" in violation of Section 253(a).³³ The only thing preventing TCI from providing telecommunications services in Troy is TCI's own unilateral decision to ignore Troy's Telecommunications Ordinance, even though, as noted above, that Ordinance is fully permitted under Section 253(c) as the means through which Troy manages its rights-of-way and obtains compensation. Because it is not Troy's Ordinance that has prevented TCI from providing telecommunications services, but TCI's own decision not even to apply for a telecommunications franchise, TCI lacks standing to complain to the Commission about the effect of such Ordinance on it. Moreover, since no court has held the Ordinance invalid under Section 253(c), the Commission lacks jurisdiction to reach any claim that the Ordinance violates Section 253(a) or (c).

³¹ Id.

³² Garden State Broadcasting Ltd. Partnership v. FCC, 996 F.2d 386 (D.C. Cir. 1993); Aeronautical Radio, Inc. v. FCC, 983 F.2d 275, (D.C. Cir. 1993).

³³ 1996 Act, § 253(a).

V. TCI'S CLAIM THAT TROY DENIED TCI PERMITS FOR THE UPGRADE OF "CABLE" FACILITIES IS BELIED BY THE RECORD.

TCI's Petition fails to support its allegations that Troy denied TCI's Royal Oak and Livernois Road permit applications for failure to "obtain a telecommunications franchise before constructing any fiber optic facilities".³⁴ In fact, the TCI Petition actually admits that the City granted the Livernois Road permit.³⁵ TCI further concedes that it has submitted a revised Royal Oak application in an attempt to clarify to Troy why TCI has chosen to route indirectly its fiber optic cable³⁶ through a largely nonresidential area,³⁷ even though TCI claims that the fiber optic cable is to be used only for cable television.³⁸ TCI seeks to hide these troublesome facts by complaining that the Livernois Road permit was not granted in precisely the manner that TCI wished (i.e., without an endorsement clarifying its use for cable), and the Royal Oak application is still pending.³⁹ But the facts remain: Troy has denied no permits. It properly limited the scope of the Livernois Road permit to cable services, because a franchise to use Troy's rights-of-way to provide cable

³⁴ TCI Petition at 8-9 (emphasis included).

³⁵ TCI Petition at 9.

³⁶ TCI Petition at 9, fn.16.

³⁷ While TCI contends that Troy has rejected the Royal Oak application, a plain reading of Troy's letter shows that it does not contain any such denial at all. The letter does, however, include a request for additional routing information.

³⁸ TCI Petition at Exhibit 8.

³⁹ See TCI Petition at 9.

services is the only franchise TCI has in Troy -- and in fact the only franchise TCI has ever sought. . . And the Royal Oak application is pending because TCI's proposed routing raises similar franchise scope concerns that require further information.

Conclusion

Because TCI has failed to support its petition for relief, the Commission should dismiss or deny the petition as legally and factually insufficient to warrant a declaratory ruling on the issues proffered by TCI. Specifically:

1) The Commission cannot declare that Troy has acted contrary to Section 621(b)(3), because that provision applies only to Title VI franchises and in no way limits municipal right-of-way management and compensation authority over telecommunication service providers, including cable operators that provide telecommunication services.

2) The Commission cannot declare that Troy's Telecommunications Ordinance exceeds the City's authority under Section 253(c), because Congress gave exclusive jurisdiction over such Section 253(c) questions to the courts. Moreover, the Commission cannot declare, as TCI has requested, that Troy's Ordinance and denial of permit applications violate Section 253(a) of the 1996 Act, because (1) TCI cannot provide evidence that the City denied the applications; and (2) Troy's requirement

that TCI comply with its Telecommunications Ordinance does not prohibit it from entering the interstate or intrastate telecommunications market.

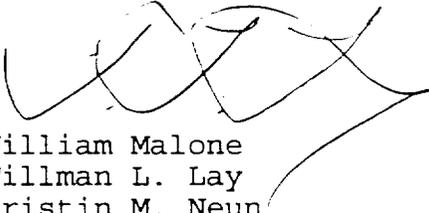
3) The Commission cannot declare that the City's Telecommunications Ordinance and the City's denial of the TCI's permits are preempted by Section 253(d) of the 1996 Act because (1) TCI does not show that the permits were denied; (2) the Telecommunications Ordinance is the means by which Troy manages and receives compensation for the rights-of-way as fully permitted under Section 253(c); and (3) municipal right-of-way management and compensation is not subject to preemption by the Commission under Section 253(d).

4) The Commission cannot declare Troy's denial of the TCI Royal Oak and Livernois permit applications to be a violation of the 1996 Act, since the TCI Petition admits that (1) the Livernois Road permit was issued, not denied; and (2) the Royal

Oak application has raised questions that TCI has been obliged to clarify.

Respectfully submitted,

By



William Malone
Tillman L. Lay
Kristin M. Neun
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
1225 19th Street, N.W., Suite 400
Washington, D.C. 20036
(202) 785-0600

Attorneys for PROTEC, Michigan Municipal League, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, the City of Los Angeles, California, the City of Chicago, Illinois, and the Michigan Communities

September 4, 1996

EXHIBIT 1

"MICHIGAN COMMUNITIES" ARE:

<u>MUNICIPALITY</u>	<u>COUNTY</u>
Ada Township	Kent
Adrian Township	Lenawee
Algoma Township	Kent
Allegan Township	Allegan
City of Alma	Gratiot
City of Ann Arbor	Washtenaw
Arcadia Township	Lapeer
Attica Township	Lapeer
Au Sable Charter Township	Iosco
Baroda Township	Berrien
Bates Township	Iron
Bath Charter Township	Clinton
City of Beaverton	Gladwin
City of Berkley	Oakland
Berlin Township	St. Clair
Bertran Township	Berrien
Big Rapids Charter Township	Mecosta
City of Big Rapids	Mecosta
Blackman Charter Township	Jackson
Bloomfield Charter Township	Oakland
Brandon Charter Township	Oakland
City of Bridgman	Berrien
Brooks Township	Newago
Butman Township	Gladwin
Byron Township	Kent
City of Cadillac	Wexford
Caledonia Charter Township	Kent
Calumet Charter Township	Houghton
Canton Charter Township	Wayne
Carlton Township	Barry
Village of Caro	Tuscola
Carrollton Township	Saginaw
Casco Township	Allegan
Village of Cassopolis	Cass
City of Centerline	Macomb
Chikaming Township	Berrien
China Charter Township	St. Clair
Clam Union Township	Missaukee
City of Clawson	Oakland
Cleon Township	Manistee
Village of Clinton	Lenawee
City of Coldwater	Branch
Village of Columbiaville	Lapeer
Columbus Township	St. Clair

Cooper Charter Township	Kalamazoo
City of Corrunna	Shiawassee
Croton Township	Newaygo
Crystal Falls Township	Iron
Davison Township	Genesee
City of Dearborn	Wayne
Delta Charter Township	Eaton
City of Detroit	Wayne
Egelston Township	Muskegon
Ely Township	Marquette
Flint Charter Township	Genesee
Fork Township	Mecosta
City of Frankfort	Benzie
Fruitport Charter Township	Muskegon
Geneva Township	Midland
Geneva Township	Van Buren
Georgetown Charter Township	Ottawa
City of Gibraltar	Wayne
Goodland Township	Lapeer
Village of Grand Beach	Berrien
Grayling Township	Crawford
Green Oak Township	Livingston
Greenwood Township	Oceana
Village of Grosse Pointe Shores	Wayne
Groveland Township	Oakland
City of Harrison	Clare
City of Hastings	Barry
Highland Charter Township	Oakland
Hillman Township	Montmorency
Holton Township	Muskegon
Homer Township	Midland
Huron Charter Township	Wayne
City of Inkster	Wayne
Inverness Township	Cheboygan
City of Ishpeming	Marquette
City of Kalamazoo	Kalamazoo
Kawkawlin Township	Bay
City of Kentwood	Kent
Kochville Township	Saginaw
Village of Lake Orion	Oakland
Laketon Township	Muskegon
Laketown Township	Allegan
Lansing Charter Township	Ingham
City of Lapeer	Lapeer
Lapeer Township	Lapeer
Lee Township	Midland
Leelanau Township	Leelanau
Leoni Township	Jackson
Lexington Township	Sanilac
Lincoln Township	Clare
City of Linden	Genesee
City of Livonia	Wayne

MUNICIPALITYCOUNTY

Long Lake Township	Grand Traverse
Lowell Charter Township	Kent
City of Luna Pier	Monroe
City of Madison Heights	Oakland
Village of Marcellus	Cass
Marquette Charter Township	Marquette
Marion Township	Livingston
Mayfield Township	Lapeer
Mecosta Township	Mecosta
Village of Michiana	Berrien
City of Midland	Midland/Bay
City of Milan	Washtenaw/Monroe
Millington Township	Tuscola
Milton Township	Cass
Monitor Charter Township	Bay
City of Monroe	Monroe
City of Montrose	Genesee
Morton Township	Mecosta
Mt. Haley Township	Midland
Mundy Charter Township	Genesee
Muskegon Charter Township	Muskegon
City of Muskegon Heights	Muskegon
City of Negaunee	Marquette
City of Newaygo	Newaygo
City of New Baltimore	Macomb
Newton Township	Calhoun
City of Norton Shores	Muskegon
City of Novi	Oakland
City of Oak Park	Oakland
Ogden Township	Lenawee
Onondaga Township	Ingham
Ontwa Township	Cass
Oregon Township	Lapeer
Orion Charter Township	Oakland
Orleans Township	Ionia
City of Parchment	Kalamazoo
Village of Parma	Jackson
Village of Paw Paw	Van Buren
City of Perry	Shiawassee
Plainfield Charter Township	Kent
City of Plainwell	Allegan
Plymouth Charter Township	Wayne
Pokagon Township	Cass
Polkton Charter Township	Ottawa
City of Pontiac	Oakland
Port Sheldon Township	Ottawa
Raisin Charter Township	Lenawee
Redford Charter Township	Wayne
Robinson Township	Ottawa
City of Rochester	Oakland

<u>MUNICIPALITY</u>	<u>COUNTY</u>
City of Rockwood	Kent
City of Romulus	Wayne
City of Royal Oak	Oakland
City of St. Ignace	Mackinac
Salem Township	Washtenaw
City of Saline	Washtenaw
Sanborn Township	Alpena
Village of Sanford	Midland
Village of Schoolcraft	Kalamazoo
Sheridan Charter Township	Newaygo
City of South Lyon	Oakland
City of Southfield	Oakland
Southwestern Oakland County Cable Commission, consisting of the City of Farmington	Oakland
City of Farmington Hills	Oakland
City of Novi	Oakland
Spring Arbor Township	Jackson
City of Springfield	Calhoun
Superior Charter Township	Washtenaw
Swan Creek Township	Saginaw
City of Tecumseh	Lenawee
City of Traverse City	Grand Traverse
Tuscarora Township	Cheboygan
Union Charter Township	Isabella
City of Utica	Macomb
Village of Vicksburg	Kalamazoo
Washington Township	Macomb
Watervliet Township	Berrien
City of Wayland	Oakland
City of Wayne	Wayne
City of West Branch	Ogemaw
Western Oakland County Cable Communications Authority, consisting of the Commerce Charter Township	Oakland
Highland Charter Township	Oakland
Lyon Charter Township	Oakland
City of Milford	Oakland
Village of Milford	Oakland
City of Walled Lake	Oakland
White Lake Charter Township	Oakland
City of Wixom	Oakland
Village of Wolverine	Oakland
Whiteford Township	Monroe
Williams Charter Township	Bay
Windsor Charter Township	Eaton
Yankee Springs Township	Barry
City of Ypsilanti	Washtenaw

MUNICIPALITY

COUNTY

The preceding list of 188 Michigan Communities consists of 62 cities, 110 townships and 16 villages, all from the State of Michigan.

Certificate of Service

I hereby certify that I have caused to be served this 4th day of September, 1996, by first class mail, postage prepaid, a copy of the foregoing JOINT MOTION TO DISMISS OR DENY to the following persons:

Howard J. Symons
Mintz, Levin, Cohen, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 343-7300

Paul Glist
John D. Seiver
T. Scott Thompson
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

Mark Van Bergh, Esquire
Roberts & Eckard, P.C.
Attorney for City of Troy
1150 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

ITS (by hand delivery)
1919 M Street, N.W.
Room 246
Washington, D.C. 20036


Kristin M. Neun

September 4, 1996