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October 26, 1999

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

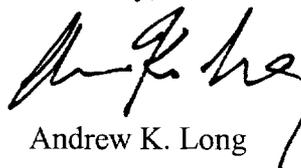
Re: Errata; In the Matter of Promotion of Competitive Networks in Local
Telecommunications Markets, WT Docket No. 99-217

Dear Ms. Salas:

On October 12, 1999, the Comments of GTE were timely filed in the above-referenced docket. Unfortunately, updates to the material contained in Appendix B of that filing were inadvertently omitted. Attached please find a corrected version of Appendix B. We respectfully request that the filed version of Appendix B be withdrawn and that all publicly available electronic and paper copies be replaced with the revised version attached hereto. We apologize for any inconvenience this may have caused.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Andrew K. Long

Attachment

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List ABCDE

GTE

Ongoing Public Right-of-Way Issues:

Examples of Local Government Right-of-Way (“ROW”) Provisions¹

Type of ROW Activity or Prohibited Activity	Example Provisions	Resolution
A. Burdensome application, franchise, and operating requirements imposed unrelated to ROW use (Consequences of noncompliance may include denial of franchise, denial of access to and use of ROW, and other civil and/or criminal penalties).	1. Dallas, Texas Among the demands by the City found to be unlawful were disclosure of detailed financial and operational information, dedication of fiber optic strands and conduits to the City for the City’s free and exclusive use, submission to detailed City audits, notification to the City of all communications with the FCC, SEC, and PUC related to services provided in Dallas, and payment of four percent of all gross revenue, from whatever source, arising out of business operations in Dallas.	Litigation involving GTE remains pending in the U.S. District Court for the Northern District of Texas; however, the court has, to date, ruled that the City lacks authority under federal and state law to impose franchise conditions on telecommunications providers’ use of ROW unrelated to use or impose fees that are unrelated to ROW use. <u>AT&T Communications of the Southwest, Inc. v. City of Dallas</u> , 8 F. Supp. 2d 582 (N.D. Tex. 1998), <u>summary judgment granted</u> , 52 F. Supp. 2d 763 (N.D. Tex. 1999).

¹ The following is for illustrative purposes only. GTE does not represent that the following information is comprehensive as to the scope of the issues or to the number of jurisdictions in which it has encountered or is presently encountering onerous and burdensome right-of-way franchises or permitting requirements.

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<p>A. Burdensome application, franchise, and operating requirements imposed unrelated to ROW use (Consequences of noncompliance may include denial of franchise, denial of access to and use of ROW, and other civil and/or criminal penalties).</p>	<p>2. City in Washington</p> <p>The original City ordinance, enacted in April 1998, demanded that ROW applicants provide extensive information including information duplicative of that required by federal and/or state agencies, such as: the identity of persons with "working control" over the applicants; detailed service, mapping, and provisioning information; and copies of state certification. Under the original ordinance, the City could also prohibit ROW use based on its own determination of whether the applicant is in compliance with state and federal law, despite the fact that Washington constitutional and statutory law allow telephone companies to use ROW without a franchise. Washington ordinances in other cities have also disregarded this legal right.</p>	<p>After extensive and costly negotiation lasting in excess of twelve months, GTE and the City reached a compromise agreement and the City revised its original ordinance.</p>
	<p>3. City in Florida</p> <p>City seeks copies of all reports (annual form "M" and operational repair statistics, etc.) that are filed with the Florida Public Service Commission.</p>	<p>Attempting to delete the provision during current negotiations. No anticipated date for resolution.</p>
	<p>4. City in Virginia</p> <p>Includes requirement to provide a description of utility services to be offered and sufficient information to determine whether such service is subject to cable franchising, a determination not properly a matter of municipal jurisdiction.</p>	<p>Negotiations pending. No known date anticipated for resolution.</p>

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<p>A. Burdensome application, franchise, and operating requirements imposed unrelated to ROW use (Consequences of noncompliance may include denial of franchise, denial of access to and use of ROW, and other civil and/or criminal penalties).</p>	<p>5. City in Virginia</p> <p>Requires detailed description of transmission medium to be utilized in provision of services. Such a requirement goes beyond the city's reasonable inquiry as to what is being placed in the ROW and results in the disclosure of confidential competitive business information unrelated to use or occupancy of the ROW. Full disclosure of transmission media and the details requested by the city would also entail disclosure of the type of services intended; again, this is not reasonably related to ROW management. Further, this type of disclosure is detrimental to the competitive interests of telecommunications providers.</p>	<p>Negotiations pending. No known date anticipated for resolution.</p>
	<p>6. City in Virginia</p> <p>The City seeks documentation establishing all "other" government "approvals." Included in this request are copies of certification or other documentation from the State corporation commission and other State regulatory agencies. Much of this documentation is already on public record and obtainable by the City upon request if it truly has a legitimate inquiry. However, repeated duplicative reproduction of this documentation serves merely to unnecessarily and unreasonably burden telecommunications providers and stifle competition.</p>	<p>Negotiations pending. No known date anticipated for resolution.</p>

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<p>A. Burdensome application, franchise, and operating requirements imposed unrelated to ROW use (Consequences of noncompliance may include denial of franchise, denial of access to and use of ROW, and other civil and/or criminal penalties).</p>	<p>7. City in Virginia</p> <p>City has demanded unreasonable record retention and requires that all books and accounts be maintained in accordance with the City's ordinance, even if this exceeds or conflicts with requirements imposed by the FCC, SEC, IRS, and state utility commission. The City also seeks to determine and dictate the "manner" in which a provider's books and records are kept. Such proscriptions are beyond the scope of ROW management and serve merely to increase the administrative and cost burdens of telecommunications providers.</p>	<p>Negotiations pending. No known date anticipated for resolution.</p>
	<p>8. City in Washington</p> <p>In the recital clauses of the revised Ordinance, the City recited language indicating that ROW has been "acquired" by the City at "great cost and expense" and the City purports to seek recovery of this "cost." Such characterization is not accurate, as most public ROW is acquired by state grant or private dedication at no cost to the City.</p>	<p>None.</p>
	<p>9. City in Nebraska</p> <p>City approval required on interconnection or resale agreements with other providers and such agreements must be filed with the City. Such requirements are not within local jurisdiction and result in competitive disadvantages to the disclosing providers who may be required to disclose confidential business information.</p>	<p>None.</p>

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<p>B. Unfair and unreasonable compensation, including excessive and/or duplicative fees and “in-kind” services.</p>	<p>1. Dallas, Texas</p> <p>The City of Dallas had originally imposed a fee of four percent of gross revenues from all business operations in the city, regardless of the source or whether they derived from any telecommunications infrastructure or other facilities located in or on the ROW.</p>	<p>A federal court has ruled to date that such a broad compensation scheme was unrelated to ROW use and in violation of federal law. <u>AT&T Communications of the Southwest, Inc. v. City of Dallas</u>, 8 F. Supp. 2d 582 (N.D. Tex. 1998), <u>summary judgment granted</u>, 52 F. Supp. 2d 763 (N.D. Tex. 1999).</p>
	<p>2. County in Washington</p> <p>The County has created an elaborate compensation scheme which requires an annual \$1.00 per linear foot fee on “Prime Urban” areas, but also requires, if the total length of the installation is in excess of 1,000 linear feet, the provision of free fiber and conduit to the exclusive use of the County. If a company installs single-mode fiber, it must install, free of charge, no less than 12 strands of the same type of fiber for the exclusive use of the County in perpetuity.</p>	<p>None.</p>
	<p>3. Ft. Wayne, IN</p> <p>City has attempted to enforce an ordinance which grants, in perpetuity, to the city “the right to install and maintain, free of charge, upon any poles and within any pipes or conduits or other facilities of any public utility located within the public rights-of-way, any facilities desired by the City which specifically serve public safety purposes”</p>	<p>GTE filed a complaint with the Indiana Utility Regulatory Commission alleging violations of the Telecommunications Act of 1996; violation of Indiana law which limits municipalities to “direct, actual, and reasonably incurred costs;” and unlawful takings claims. Hearing pending.</p>

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<p>B. Unfair and unreasonable compensation, including excessive and/or duplicative fees and “in-kind” services.</p>	<p>4. City in Virginia</p> <p>City attempted to extract an unreasonable, exorbitant franchise fee for the privilege of placing a few miles of fiber-optic cable.</p>	<p>GTE refused to pay an unreasonable franchise fee and did not sign a franchise agreement with the City. GTE has leased facilities from other providers as an alternative to negotiating with the City.</p>
	<p>5. City in Illinois</p> <p>Requires franchise fee in the form of “in-kind” services (free business concession lines) in addition to monetary payment.</p>	<p>Negotiations pending regarding whether City will implement the Illinois State Infrastructure Maintenance Fund which will eliminate “in-kind” compensation.</p>
	<p>6. City in Florida</p> <p>Municipality has requested that GTE participate in its downtown beautification project which requires the mandatory undergrounding of 90% of telecommunication facilities within a specified time-frame. This relocation project would be at GTE’s sole cost and expense.</p>	<p>Negotiations pending.</p>
	<p>7. Several cities in Florida</p> <p>Franchises require telecommunications companies to provide, free of charge, the installation of three public pay phones. In addition, each City is to receive 15% of the receipts from all coin telephones located within that City.</p>	<p>GTE is attempting to negotiate with at least one of these cities to delete such provisions. These provisions appear contrary to <u>BellSouth Telecommunications, Inc. v. City of Coral Springs, Florida</u>, 42 F. Supp. 2d 1304 (S.D. Fla. 1999).</p>

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<p>B. Unfair and unreasonable compensation, including excessive and/or duplicative fees and “in-kind” services.</p>	<p>8. City in Oregon</p> <p>City attempted to collect fees in excess of those allowed under Oregon state law, which permits imposition of a privilege tax on telecommunications in the form of a percentage of revenues in lieu of any additional fees or charges for use of ROW. <u>See</u> Or. Rev. Stat. § 221.515 (1999).</p>	<p>GTE refused to sign an agreement that it believed to be in violation of federal and state law. After notice from GTE, the City agreed to drop the objectionable provisions.</p>
	<p>9. City in Washington</p> <p>City requires excessive, separate fees for what it terms “Invasion Mitigation.” This is a street degradation fee; however, there are serious and costly implications with respect to this sort of fee. Among the issues facing industry regarding this type of fee are: (1) the amount of the fee is not substantiated by empirical data demonstrating that the City does, in fact, experience degradation to the useful life of the street; (2) it is only applicable to telecommunications providers; and (3) it fails to provide for allocation among different utilities who cut into street ROW. Under Washington law, local governments may only seek compensation from telecommunication providers using ROW which are designed to recover actual expenses directly related to managing ROW. Fees in excess of actual expenses constitute unlawful additional compensation and are barred by state law. <u>See</u> Wash. Rev. Code § 35.21.865 (1998).</p>	<p>None.</p>

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<p>C. Noncompliance penalties: revocation, criminal sanctions, and fines.</p>	<p>1. City in Washington</p> <p>Ordinance was enacted by the City imposing civil and criminal penalties for certain violations of the ROW ordinance.</p>	<p>Notwithstanding the fact that a federal court has recently ruled that even the mere threat of criminal sanctions would constitute a prohibitive barrier to entry under 45 U.S.C. § 253, GTE was unable to successfully remove this provision during negotiations. <u>See AT&T Communications of the Southwest, Inc. v. City of Austin, Texas</u>, 975 F. Supp. 928 (W.D. Tex. 1997).</p>
<p>D. Transfer and/or assignment restrictions and prohibitions.</p>	<p>1. City in Virginia</p> <p>Franchise requires written approval of any transfer/assignment of control.</p>	<p>GTE is attempting to amend this transfer approval provision from its franchise agreements so that approval is not required for corporate mergers, etc.</p>
	<p>2. Several cities in Florida</p> <p>Franchises require written approval of any transfer/ assignment of control.</p>	<p>GTE is attempting to amend this transfer approval provision from its franchise agreements so that approval is not required for corporate mergers, etc.</p>
<p>E. Most-Favored Nations Treatment.</p>	<p>1. City in Florida</p> <p>Franchise language states that if any higher rate is allowed by the state legislature or any more favorable terms are granted to another municipality, then the more favorable terms will apply to the City.</p>	<p>Negotiations pending.</p>

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<p>F. Unreasonable franchise termination language.</p>	<p>1. City in Florida</p> <p>Franchise agreement includes termination language that would require company to cease operations for 365 days, and in the event of termination of the contract, remove or abandon all facilities and make abandoned facilities safe. All abandoned facilities become the property of the City.</p>	<p>Negotiations pending.</p>
	<p>2. Other Florida cities also include less egregious, yet troublesome termination language</p> <p>Many cities provide that upon termination of the ROW agreement, the telecommunications company essentially agrees to sell its assets and cease operations in the city.</p>	<p>GTE will attempt to negotiate in good faith with as many cities as possible.</p>
	<p>3. City in Virginia</p> <p>Termination language specifies exactly how facilities are to be valued and sold by the existing franchisee in the case of termination and outlines all steps necessary for termination of telecommunications franchise. Requires sale of facilities to City upon termination.</p>	<p>Negotiations pending.</p>

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<p>G. Local municipal organizations and unreasonable and overly burdensome ROW ordinances.</p>	<p>1. Illinois Municipal League</p> <p>In September 1998, the Illinois Municipal League (IML) began to distribute and advocate its model ROW ordinance to thousands of Illinois municipalities. The IML's proposed ordinance contains excessive construction standards, excessive risk management (insurance/ indemnification/ security fund) language, and excessive application/ registration requirements, including a description of the purpose and use of the facilities. All major local exchange carriers as well as the state telecommunications association have indicated a willingness to challenge any municipality which chooses to adopt the IML's proposed ordinance.</p>	<p>None.</p>

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<p>G. Local municipal organizations and unreasonable and overly burdensome ROW ordinances.</p>	<p>2. Municipal Association of South Carolina</p> <p>The Municipal Association of South Carolina (MASC) has advocated to all of its members a model ROW ordinance which includes onerous operational standards unrelated to ROW use and doubles the level of franchise fees collected by municipalities within the state (Carriers currently pay approximately 1.5% in franchise fees, while the proposed model ordinance increases such fees to 3%). Some of the unreasonable operational standards in the model include the city proscribing minimum cover for underground facilities and installation of facilities in particular locations to preserve "visual qualities" (the objection to this is that there are occasions where it is not possible to relocate facilities: a provider should have the discretion to make determinations based on unique service requirements or technical specifications and not based solely on aesthetics).</p>	<p>The MASC ordinance was recently preempted by statewide legislation. However, the MASC proposal has, for the past year and a half, created an unreasonable administrative burden upon carriers operating in South Carolina.</p>
	<p>3. Metropolitan Area Communications Commission (MACC), Oregon</p> <p>In November 1998, MACC distributed its "Master Telecommunication Ordinance" intended for use by Oregon cities. This model contains numerous objectionable provisions, including the imposition of additional fees and charges that appear contrary to Oregon state law, which allows for a privilege tax up to seven percent of gross receipts in lieu of additional fees.</p>	<p>None.</p>

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<p>H. Miscellaneous burdensome and excessive ROW provisions.</p>	<p>1. Numerous cities nationwide</p> <p>Numerous cities nationwide require certified professional engineering certification for even the most routine, minor ROW activities. Such certification is costly, exceeds generally accepted engineering practices, and, particularly in minor projects such as routine service drops, serves no legitimate purpose in ROW management.</p>	<p>Some cities are willing to drop or remove the certification for certain activities; however, this is usually a result of a lengthy and costly negotiation process.</p>
	<p>2. City in Eastern Washington</p> <p>City demands GIS (satellite) mapping and provision of maps or other technical data in whatever form or media proscribed by the City.</p>	<p>After lengthy and costly negotiation, the City agreed to remove these unnecessary and costly requirements.</p>