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JOE PUTNAM
MAYOR

December 10, 1999

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

Ex Parte Filing WT 99-217; CC 96-98/
Reply to the Comments of SBC Communications, Inc.

Dear Chairman Kennard:

The City of Irving, Texas, has several important points to present to the Federal Communications Commission in response to the Comments filed by SBC Communications, Inc. First, the City of Irving feels that the Commission rules should require that proper notice and an opportunity to respond be afforded to any party when allegations are made against them. Second, the FCC does not have jurisdiction over local issues of right-of-way management and compensation. Third, insofar as the right-of-way management requirements of the City of Irving, Texas,, there are additional considerations that were not included in the Comments of SBC Communications, Inc. which the FCC should know. Fourth, it is the position of the City of Irving, Texas, that the taxes it administers have been fair to telecommunications companies, and that the FCC does not have jurisdiction over local taxes. Finally, we ask that this proceeding be closed without further action by the FCC.

The City of Irving, Texas, would like to express our serious concern in regard to the above proceedings. First, we would like to formally express our concern in regard to procedural rules that allow the Commission, in its capacity as a decision making body, to hear unfounded allegations from one side in the proceeding without providing an opportunity to the named party to respond to the allegations made against it. The Commission should require that every entity named by another entity in any filing before this body be given notice and an opportunity to respond. In the case of the filing of Comments by SBC Communications, Inc., the City of Irving, Texas,, was not sent notice of the Comments although the City of Irving, Texas, was mentioned in the Comments. SBC Communications, Inc. sent a copy of its Comments to 236 entities according to its Certificate of Service, but it did not send a copy to the City of Irving, Texas,. It also does not appear from SBC's Certificate of Service that any notification was sent to the Attorney General of the State of Texas, despite the apparent request from SBC that the Commission consider overturning the recently enacted Texas law in regard to how certificated telecommunications providers pay for use of municipally owned rights of way. Fundamental notions of fairness require that parties be given notice and an opportunity to respond when allegations are made against them.

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Management of the right-of-way and compensation for use of the right-of-way are clearly local issues, as was recognized by Congress in 47 U.S.C. § 253, which states: "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..." Local management of the rights-of-way is legislatively seen as an issue to be handled locally, not a "third tier of regulation" as stated by SBC in their Comments. The examples in SBC's Comments involve issues of right-of-way management or compensation; none of the examples mentioned in SBC's Comments were of cities regulating services, prices or any similar business practices.

In the example given by SBC Communications, Inc. in regard to the City of Irving, Texas,, SBC's Comments do not mention that the City of Irving, Texas,, has more than 25 users of its rights of way (see attached list) and the City of Irving, Texas,, has had some serious incidents occur in the city's rights-of-way, despite the state "one call" law mentioned by SBC Communications, Inc. in their Comments. These incidents include: a break of a 48 inch water main (the break occurred next to Texas Stadium and a major highway and without prompt local action could have washed out the highway); interference with communications lines (in one instance a subcontractor for a telecommunications company hit communications lines and continued to bore, actually causing telephones to be torn out of people's hands and hit the wall in a nearby office building); and numerous near misses, many by telecommunications companies or their contractors or subcontractors, of high powered gas and electric lines, where serious loss of life was prevented only by the actions of city inspectors. The City of Irving's mapping requirements are seen as reasonable and desirable by other telecommunications companies, both incumbents and new entrants. In addition, when Irving's City Council passed the city's right-of-way management ordinance, I, as Mayor, made a commitment for city staff to continue to monitor city requirements, to ensure that the companies were not under any inconveniences, other than those that are necessary for safety.

SBC Communications, Inc. is also asking that the Commission suspend the tax requirements of state and local jurisdictions, for sales and property taxes. The Company asserts "Moreover, in some states, telecommunications companies are denied the tax credits permitted to other industries." In our city, SBC has received approval of a tax abatement for a planned building and another telecommunications company, GTE, received the first tax abatement ever given by the City of Irving, Texas,. While the City of Irving, Texas, would like to point out that we have included telecommunications companies in tax abatements, we would still urge the Commission not to pursue any further inquiries or rulemakings in regard to local taxes, as such activity is beyond the jurisdiction of the Commission.

In closing, the City of Irving, Texas,, would urge the Commission to cease further activity into state and local taxes, right-of-way management or compensation or the other topics set forth as potential topics of rulemaking authority, including zoning issues. Inquiries into right-of-way management and compensation or local taxes are not within the jurisdiction of the FCC and, thus, this Notice of Inquiry and Notice of Proposed Rulemaking should be closed with no further Commission action. In addition, such regular inquiries into local right-of-way matters by Commission improperly encourage divisiveness between companies and cities. For example, the

City of Irving, Texas, is seen by most telecommunications companies as a good city to work with in regard to these issues. Many companies have praised our efforts to be fair and to help them locate their facilities in Irving. Clearly, Irving is feeling the effects of the telecommunications "boom" as can be seen by the number of right-of-way users in Irving. However, this Notice of Inquiry and Notice of Proposed Rulemaking gives one company (out of more than 25) an opportunity to dredge up one small section of the city's right-of-way management ordinance and try to unilaterally present its case to a faraway body for a different decision on right-of-way use. These ongoing inquiries are only encouraging ill will between cities and companies. I fervently hope that the incessant attempts by industry to oust cities from right-of-way management and compensation are unsuccessful. If those efforts were to succeed, it would be a great tragedy for the people of this country, as the absence of cities in the critical right-of-way management function would be adversely felt by the citizens of this country.

Thank you for your serious consideration of these comments and we would ask that the inquiry and proposed rulemaking be closed.

Very truly yours,

Joe Putnam

Joe Putnam
Mayor
City of Irving, Texas,

Attachment

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