

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Washington, D.C.

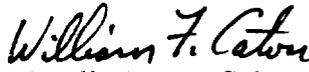
January 10, 2000

City of Plano  
c/o Julie M. Fleischer  
Assistant to the City Manager  
P.O. Box 860358  
Plano, Texas 75086-0358

Re: Acceptance of Comments As Timely Filed in (Docket Nos. 99-217 and 96-98)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceedings as timely filed due to operational problems with the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

*for*   
Magalie Roman Salas  
Secretary

**city of plano**



December 14, 1999

**RECEIVED**

**DEC 15 1999**

**FCC MAIL ROOM**

**VIA FEDERAL EXPRESS**  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

RE: Comments in WT Docket No. 99-217, CC Docket No. 96-98

Dear Sir or Madame:

Enclosed please find an original and seven copies of a letter comment from the City of Plano for filing in the above-referenced docket. Please return one file-marked copy of the comments to me in the enclosed envelope.

The City of Plano attempted to submit these comments on December 13 by both electronic filing and e-mail. However, the e-mail filing was returned with a fatal error, and it is my understanding from the ECFS Help Desk and Mr. Bill Caton that the ECFS was down. It is also my understanding from Mr. Caton that the City may request that its comments be timely filed because of the problems with the ECFS. Therefore, the City of Plano respectfully requests that these comments be timely filed as of December 13, 1999, due to the fact that the ECFS system was down.

Respectfully submitted,

JULIE M. FLEISCHER  
Assistant to the City Manager  
Tel. (972) 941-5440  
Fax (972) 423-9587

c: Honorable Mayor and Council Members

John Longstreet  
Mayor

Dick Bode  
Mayor Pro tem

Rick Neudorff  
Deputy Mayor Pro tem

Shep Stahel  
Place 1

Pat Evans  
Place 2

Phil Dyer  
Place 3

Steve Stovall  
Place 5

John R. Roach, Jr.  
Place 7

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Thomas H. Muehlenbeck  
City Manager

EX PARTE OR LATE FILED  
**city of plano**



December 13, 1999

**VIA ELECTRONIC FILING**

Chairman William Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

**RECEIVED**

**DEC 15 1999**

**FCC MAIL ROOM**

*John Longstreet*  
Mayor

*Dick Bode*  
Mayor Pro tem

*Rick Neudorff*  
Deputy Mayor Pro tem

*Shep Stahel*  
Place 1

*Pat Evans*  
Place 2

*Phil Dyer*  
Place 3

*Steve Stovall*  
Place 5

*John R. Roach, Jr.*  
Place 7

RE: Comments in WT Docket No. 99-217, CC Docket No. 96-98

Dear Chairman Kennard:

The City of Plano, Texas strongly opposes any attempt by the Commission to pre-empt local communities' authority over their public rights-of-way, or local tax authority, as suggested in the Commission's Notice of Inquiry ("NOI") in this docket. This lawful local authority does not impede the development of competitive networks. Rather, it provides a fair and appropriate environment for that development, consistent with public safety and the principle of a fair return to the community for the resources used by telecommunications providers.

The fundamental principle of federalism and the constitutional rights of local governments prohibit federal agencies from seizing local property for the benefit of private companies. The Telecommunications Act of 1996 expressly preserves local authority over the City's public rights-of-way. Paragraph 75 of the "Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98" filed in docket contains an acknowledgement that the right of local governments to manage the public rights-of-way has been recognized by the Commission and courts.

"These decisions recognize that State and local governments have an important interest in managing the public rights-of-way to promote the public good, and in obtaining fair and nondiscriminatory compensation for use of the rights-of-way."

Action by the Commission to preempt local authority over public rights-of-way would result in serious adverse consequences for all affected communities: loss of crucial revenues that support vital public services, such as police and fire protection, as well as unmanaged chaos in the public rights-of-way. Thus, attempted federal preemption on behalf of the telecommunications industry would be not only unlawful but poor policy.

•  
*Thomas H. Muehlenbeck*  
City Manager

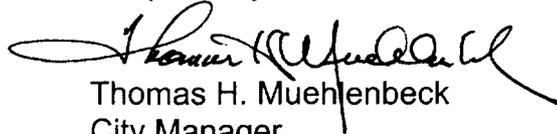
Chairman William Kennard  
December 13, 1999  
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In 1999, the Texas Legislature adopted House Bill 1777 thereby imposing sweeping revisions of telecommunications franchising practices in Texas. This bill is the product of lengthy negotiations between industry and city representatives that resulted in a compromise and consensus with regard to various telecommunications franchise issues. House Bill 1777 serves to level the playing field between ILECs and CLECs and, consequently, promote full and fair competition in the provision of local telecommunications service. Implementation of House Bill 1777 is currently in progress; thus, whether it is successful and meets the intention of the legislature has yet to be seen.

The right of local governments to manage the public rights-of-way was recognized by House Bill 1777. House Bill 1777 addressed the way cities are compensated for the value of public rights-of-way but did not limit a city's authority to manage the use of its rights-of-way. Thus, it is important to note that, under House Bill 1777, municipalities were not preempted from managing their rights-of-way. The City of Plano, like other cities in North Texas, is currently preparing a right-of-way management ordinance containing regulations that will be competitively neutral and will apply to all users of the City's rights-of-way. Input with regard to those regulations will be obtained from right-of-way users (including telecommunications providers) prior to the adoption of the right-of-way management ordinance. Thus, the City of Plano is attempting to work together with all right-of-way users to establish appropriate conditions under which they may use our property. We anticipate that one of the results will be the encouragement of competition in each telecommunications market.

Thus far, the Commission has recognized the importance of vigilant restraint in addressing local property rights and taxation authority. The City of Plano urges you to oppose the imposition of new federal regulatory structures and to respect the rights of local governments to manage their public rights-of-way.

Respectfully submitted,



Thomas H. Muehlenbeck  
City Manager  
Tel. (972) 941-5178  
Fax (972) 423-9587

c: Honorable Mayor and Council Members