ORIGINAL

Federal Communications Commission
Washington, D.C. 20554

OCT 13 1999

EX PARTE OR LATE FILED

MAR 28 2000

The Honorable Phil Gramm
United States Senate
370 Russell Senate Office Building
Washington, DC 20510-4302

Dear Senator Gramm:

Thank you for your letter on behalf of your constituent, Mr. Jack Miller, Mayor, City of Denton, Texas. Mayor Miller believes that the Commission lacks the authority to adopt rules in WT Docket No. 99-217 and CC Docket No. 96-98 to facilitate reasonable and nondiscriminatory access by competitive telecommunications providers to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. Moreover, Mayor Miller believes that the Commission lacks the authority to take action on its inquiry in WT Docket No. 99-217 into State and local policies regarding telecommunications providers' access to public rights-of-way and taxation of telecommunications providers and services.

The Commission sought comment on these matters in FCC 99-141, released on July 7, 1999. This item represents another step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, this item addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, including, for example, apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities. The item also explores the effect of State and local rights-of-way and taxation policies on telecommunications competition.

The purpose of this item is to explore broadly what actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (LECs). Thus, the item seeks comment on a wide range of potential Commission actions, in most instances without reaching tentative conclusions. Thus, in addition to proposing and seeking comment on obligations that would apply to incumbent LECs and other utilities under certain provisions of the Communications Act, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners who allow any telecommunications carrier access to facilities that they control make comparable access available to other carriers on a nondiscriminatory basis. The item also seeks comment from both service providers and State and local governments regarding their rights-of-way management experiences, without proposing

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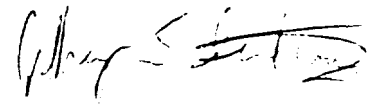
any specific action. In addition, the item seeks comment on whether State and local taxes on telecommunications providers are imposed fairly so as not to impede competition, but notes that the Commission's legal authority to preempt State and local tax policies is extremely limited.

Your letter and your constituent's letter have been placed in the record of this proceeding and will be given every consideration by the Commission. Thank you for your interest in this proceeding.

Sincerely,



Jeffrey S. Steinberg
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Wireless Telecommunications Bureau

SEP 4 1999

SEP 7 1999

JACK MILLER
MAYOR

CITY OF DENTON
215 EAST McKINNEY STREET
DENTON, TEXAS 76201

August 9, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20544

Ex Parte Filing in cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certificated to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof—all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights—a landlord, city or condominium has the right to control who comes on to their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and Building codes are purely matters of state and local jurisdiction which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type—such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be property screened) to achieve these legitimate goals, yet see that needed services are provided. This re quires us to balance competing concerns—which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity; no one wants a substation near his or her home.

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and with municipalities. We have successfully applied these principles and balanced competing concerns for eight years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones (with a minuscule track record that there are problems on such a massive scale with the 38,000 unites of local government in the U.S. as to warrant Federal action.

On rights of way, local management of them is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this—only about dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies this number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Very truly yours,

Jack Miller
Mayor

JM:af
Attachment

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