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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the matter of

City Signal Communications, Inc.
19668 Progress Drive
Strongsville, OH 44136

Petitioner,

v.

City of Pepper Pike
28000 Shaker Blvd.
Pepper Pike, OH 44092,

Defendant.

File No. :

Place on Accelerated Docket AS 00-255

2000 DEC -1 P 2:27

Petition for Declaratory Ruling

To: The Commission.

The petitioner shows that:

1. City Signal Communications, Inc. (City Signal) is a telecommunications company (CLEC) under the laws and regulations of the State of Ohio.

2. Since certification as a telecommunications provider by the Public Utilities Commission of Ohio, City Signal has secured appropriate utility pole permits and rights of way authorization, and is in the process of installing its fiber optic network through various municipalities in Northeast Ohio.

3. The City of Pepper Pike is an Ohio municipality.

4. The City of Pepper Pike has refused to grant City Signal authorization to use the public right of way to string aerial fiber optic cable for telecommunications purposes on existing utility poles.

5. During discussions with the City of Pepper Pike to obtain rights of way authorization, the Law Director for the City of Pepper Pike, Chris Gibbon, has not been accessible regarding action on a right of way authorization. See Attachment A.

6. Other telecommunications providers have fiber on utility poles throughout the City of Pepper Pike.

7. The denial of a permit to string fiber optic cable (that is, to put fiber optic cable on utility poles and not underground) for telecommunications purposes has the effect of denying telecommunications services to the residents and business subscribers in the City of Pepper Pike and surrounding areas. Refusal by the City of Pepper Pike to grant City Signal an aerial permit increases the cost of its telecommunications facilities, which would make City Signal's service non-competitive.

8. On May 17, 2000 City Signal sent the City of Pepper Pike a construction application to string aerial fiber. Pursuant to Ohio Law, the City of Pepper Pike had thirty (30) days in which to either approve or reject City Signal's construction application. The City of Pepper Pike has ignored City Signal's construction application. This is tantamount to a denial of the application. Moreover, the verbal response received from the City of Pepper Pike involved "rerouting" City Signal's network "around the City." See Attachment A.

9. Such action by the City of Pepper Pike is in violation of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), Telecommunications Act of 1996, 47 U.S.C. 151, et seq.

10. The Act expressly and directly addresses local government regulation of telecommunications company use of the right-of-way.

11. Section 253 of the Act (47 USC § 253) provides: "No ...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." Ohio law is consistent with the Act.

12. The delaying tactics employed by the City of Pepper Pike is tantamount to a denial of City Signal's construction application, and has the effect of prohibiting City Signal from providing interstate or intrastate telecommunications service.

13. Ohio House Bill 283, passed in late 1999 and codified at Chapter 4939 of the Ohio Revised Code, generally spells out the scope of a municipality's authority to regulate utility service provider and cable operator use of the right-of-way.

14. Among other things, House Bill 283 provides: That utility service providers, such as natural gas, telephone and electric companies or cable operators have the right to construct, repair, position, maintain, or operate lines, poles, pipes, conduits, ducts, equipment, and related appurtenances and facilities along, across, over, upon, and under any public way in the state.

15. That utility service providers and/or cable operators may be required to obtain the consent of political subdivisions for <u>construction,</u> as opposed to operation, maintenance and repair of existing facilities, of lines,

poles, pipes, conduits, ducts, equipment, and related appurtenances and facilities along, across, upon, and under any public way owned by a political subdivision.

16. The City of Pepper Pike, as a political subdivision of the state, may not engage in delaying tactics that are tantamount to a denial of City Signal's right or privilege of using or occupying a public right of way for purposes of "delivering ...telecommunications...service." Also, any requirement that City Signal put its fiber underground (while other telecom providers have aerial fiber) increases City Signal's costs and makes its services non-competitive, contrary to the Act. See Attachment A for history of contact with the City of Pepper Pike.

17. The City of Pepper Pike's delay is in violation of the Orders of this Commission's mandate to introduce competition into the local telecommunications markets to make competitive alternatives available to subscribers. FCC 99-141, CC Docket No. 96-98 (WT Docket No. 99-217), released June 7, 1999. See also, TCI Cablevision of Oakland County, Inc., CSR-4790, released September 19, 1997.

Wherefore, petitioner asks that the FCC preempt the enforcement of any pronouncement, rule, regulation, or ordinance by the City of Pepper Pike that prohibits, or may have the effect of prohibiting, the ability of City Signal from providing interstate or intrastate telecommunications service, and order that a permit be granted to construct fiber optic aerial facilities in the City of Pepper Pike.

November 27, 2000

Date

Nathaniel Hawthorne

Nathaniel Hawthorne, Attorney
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A copy of this petition was served upon:

City of Pepper Pike
28000 Shaker Blvd.
Pepper Pike, OH 44092

and

Bruce Akers, Mayor
City of Pepper Pike
28000 Shaker Blvd.
Pepper Pike, OH 44092

by regular U.S. Mail.

Nathaniel Hawthorne

Name

Attachment A

Pepper Pike*	• No introductory letter in file • 4-10 Call with Bob Girardi – said to call Chagrin Valley Engineering • 4-10 Cal with Don Sheehy, Chagrin Valley – said to send letter to Mayor Bruce Akers. • 4-11 Letter sent with route maps to Mayor • May 3rd meeting scheduled, subsequently postponed by Sheehy • 5-17 Met with Don Sheehy and Bob Girardi – **sent letter requesting approval to Mayor Akers, cc Chris Gibbon** – technical/engineering issues have been resolved – aerial OK – wants traffic control plans – fax daily work schedules to service director. • 5-22 Sent letter with system prints to the Mayor • 6-13 left message for Girardi asking if plans approved • 6-15 call with Gibbon – council wants to pass ordinance – meeting 6-14 we did not attend in which they expected CS (was not notified) expect ordinance introduced 7-12 Road and Safety Council meeting (Martin to attend) and then 7-19 council review – may be discussed at June 21 council meeting – Gibbon to call Martin regarding attendance – we agreed to hold off on 30-day provision until 7-19 – other wise Pepper Pike would find cause to reject application. Gibbon to send letter. • 6-21 message from Gibbon – no need to attend council meeting. • 7-5, 6, 7 messages for Gibbon and his secty – Mary. • 7-7 call with Girardi – need to call Gibbon. • 7-10 call with Gibbon = was out ill last week – will call back this afternoon regarding 7-12 agenda and legislation – he was unsure if CS is on agenda. • 7-11 call with Gibbon **(younger brother of Cleveland Heights law director)** – not on 7-12 agenda – ordinance not ready – Martin suggested approval with agreement CS to abide by new ordinance – Gibbon to discuss with Council 7-12 and call Martin 7-13. Martin said CS will need to re-file 30-day letter based on 7-13 conversation. • Send 30-day letter if no progress – send from Toledo, indicate maps previously sent. • 7-13 message for Gibbon • 7-14 call with Gibbon – waiting for comments on Cleveland Heights' proposed ordinance – will not review until ordinance is complete. 30-day letter sent from Toledo certified mail. • 7-28 message from Gibbon – willing to enter into agreement that CS will receive permit contingent upon meeting ordinance provisions when adopted. Martin left message that this arrangement is acceptable assuming our aerial is acceptable. • 8-2 message for Gibbon • 8-9 MJ responded to questions on message – council meeting that evening. • 8-10 left message for Gibbon to call. • 8-16 letter from Gibbon – cannot approve permit – open to meeting – says CS does not have pole permits (which CS does have). • 8-17 call w/Gibbon – consultant is to meet with Charlie; Martin said it's more than engineering issue and Gibbon needs to be present – Gibbon deferred. • 8-22 Pepper Pike consultant met with Charlie and Bill – encouraged rerouting around city. • 9-13 letter (from Charlie) faxed to Mike Mouser regarding aerial vs. underground charges. • 10-10 Nate to file with FCC	Don Sheehy City Engineer (440) 439-1999 Bob Girardi Service Director (216) 831-8500 Chris Gibbon Law Director (216) 781-1212