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Janet Alter
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January 26, 2001

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VIA FEDERAL EXPRESS

The Office of the Secretary
Federal Communications Commission
445 12th Street, N.W.
Room TWB 204
Washington, DC 20554

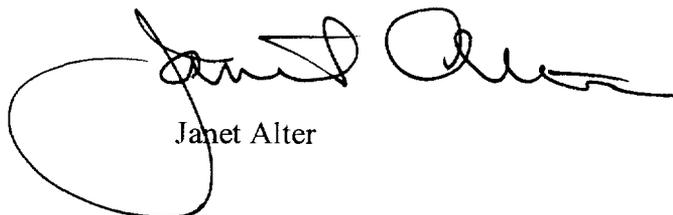
Attention: Magalie Roman Salas

Re: CS Docket No. 00-255 - Comments on City Signal Communications,
Inc. Petition for Declaratory Ruling for Use of Rights-of-Way in
Pepper Pike, Ohio

Dear Ms. Salas:

Enclosed you will find one (1) original and six (6) copies of Comments on City Signal Communications, Inc. Petition for Declaratory Ruling concerning use of public rights-of-way for access to poles in Pepper Pike, Ohio pursuant to Section 253. Although originally filed as the City of Pepper Pike's Opposition to City Signal's Petition for Declaratory Ruling, the City is refileing its opposition as Comments pursuant to my conversation with Marjorie Greene of the Cable Services Bureau.

Very truly yours,



Janet Alter

JA:kaw

Enclosure

cc: Trudy Hercules (w/encl.)
Janice Myles (w/encl.)
International Transcription Services, Inc. (w/encl.)
Christopher L. Gibbon, Esq. (w/o encl.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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File No.:

In the matter of

City Signal Communications, Inc.

Petitioner,

CS Docket No. 00-255

v.

City of Pepper Pike,

Defendant.

Opposition to Petition for Declaratory Ruling

I. INTRODUCTION

The City of Pepper Pike, Ohio (the "City"), files this Opposition to Petition for Declaratory Ruling filed by City Signal Communications, Inc. ("City Signal"), a telecommunications company under the laws and regulations of the State of Ohio. In its Petition, City Signal erroneously claims that the City has refused to grant it a permit to use the public right-of-way to string aerial fiber optic cable for telecommunications purposes on existing utility poles in the City in violation of federal and state law. The truth is that the City's communications consultant, Mike Mouser, has been in discussions with City Signal's representatives to reach agreement whereby City Signal would use underground conduit to be built by Metromedia Fiber Network (MFN). These discussions are on-going and City Signal is an active participant. City Signal's petition apparently was part of a blanket decision to file a Petition for Declaratory Ruling against all municipalities with whom City Signal did not have an agreement and did not take into consideration on-going discussions with the individual cities.

City Signal claims that the City's actions are in violation of §253 of the Telecommunications Act of 1996 (47 U.S.C. § 253). As more fully explained below, the City's treatment of City Signal's request to use the City's right-of-way has been non-discriminatory and competitively neutral because all telecommunications providers requesting authorization to use the City's rights-of-way are treated in a similar manner with the same requirements.

II. FACTS AND ARGUMENT

The City of Pepper Pike is a residential suburb in the Cleveland Metropolitan Area. (See Affidavit of Christopher L. Gibbon attached) The City of Pepper Pike was developed at a time when the City envisioned only a limited number of utilities that would be aerially strung throughout the City's residential neighborhoods. As technology and, therefore, this original assumption have changed, City leaders have become concerned that the increasing and potentially substantial number of telecommunications providers that may request to place facilities in the City's public rights-of-way may become an eyesore in the community with a detrimental effect on property values.

Currently the only telecommunications providers that have wires and other facilities on poles, pursuant to the City's permission, are the local telephone company and the cable operator. These wires and facilities have been on poles in the City for more than fifteen years. Over the past several years, the City has been approached by several telecommunications providers requesting authorization to use the City's rights-of-way for telecommunication purposes and, like City Signal, the City has been willing to work with these providers to reach an agreement that is mutually beneficial to the needs of the City as well as the provider. The City's treatment of City Signal has been the same as other potential new entrants.

City Signal has proposed to place fiber and related facilities in the City's rights-of-way. If strung aerially, these additional wires, fiber and/or boxes on the poles within the City's

neighborhoods would not only have a potentially blighting effect, but would also set an unfortunate precedent for the City in its negotiations with other telecommunications providers.

In fact, the City has been actively negotiating with MFN to place underground conduit in certain areas of the City in which City Signal has proposed to place fiber. MFN's conduit would contain excess space in which City Signal could place its fiber instead of stringing fiber aerially throughout the City. MFN has indicated a willingness to work with the City and City Signal to construct underground conduit in areas of the City in which City Signal has requested to place its fiber.

The City's consultant on telecommunications issues, Mike Mouser, has had numerous discussions with City Signal and MFN regarding a proposal to place fiber in the City's rights-of-way. (See Affidavit of Mike Mouser attached) City Signal is still actively participating in discussions and has indicated a willingness to utilize the underground conduit that MFN will construct, rather than stringing fiber aerially through the City.

Section 253 of the Telecommunications Act of 1996 provides that no local government may "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In accordance with Section 253, the City has treated City Signal's request to use the rights-of-way in the same manner in which it has treated other telecommunications providers that approached the City to place fiber in its public rights-of-way. Other than the local telephone company and cable operator, whose facilities have been on poles for over fifteen years, the City has not authorized any telecommunications provider to string fiber aerially in the City's rights-of-way.

Although negotiations with City Signal may not have progressed as quickly as City Signal would like, the City of Pepper Pike has treated City Signal in a non-discriminatory and competitively

neutral manner. No new entrants in the City's rights-of-way have been permitted to string fiber aurally in the City. Only incumbent telecommunication providers whose facilities have been in place in excess of fifteen years have fiber on utility poles in the City of Pepper Pike.

The City's requirements for new entrants has not had the "effect of prohibiting" telecommunications providers from using the City's rights-of-way. As stated above, the City has been actively negotiating with MFN to place underground conduit in the City into which City Signal could place its fiber. The City's requirements with respect to City Signal are competitively neutral and non-discriminatory because they are no more onerous than its requirements for other telecommunications providers using the City's rights-of-way.

III. REQUEST FOR A HEARING BEFORE THE FCC.

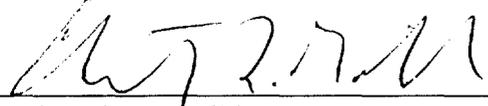
Because preventing further visual blight is a vital concern of the City of Pepper Pike, the City requests a hearing before the FCC prior to the issuance of any order compelling the City to permit City Signal to place facilities on poles.

IV. CONCLUSION

The City of Pepper Pike's requirements for telecommunications providers to use the public rights-of-way are competitively neutral and non-discriminatory. Accordingly, the City respectfully requests that the FCC deny Petitioner City Signal's request to preempt the City of Pepper Pike's

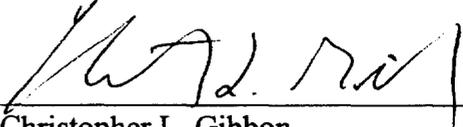
requirements and order that the City grant a permit to City Signal to construct aerial fiber optic facilities.

12/11/00
Date


Christopher L. Gibbon (Reg. No. 0010983)
Email: clg@walterhav.com
WALTER & HAVERFIELD LLP
1300 Terminal Tower
Cleveland, Ohio 44113
(216) 781-1212

CERTIFICATE OF SERVICE

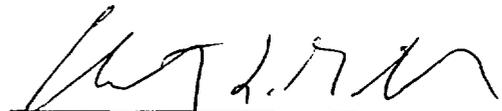
A copy of the foregoing Opposition to Petition for Declaratory Ruling was deposited in the regular U.S. Mail, postage prepaid, addressed to Nathaniel Hawthorne, Esq., Attorney for Petitioner, 27600 Chagrin Boulevard, Cleveland, Ohio 44122 this 11th day of December, 2000.


Christopher L. Gibbon

STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA)

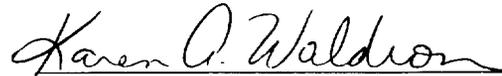
I, Christopher L. Gibbon, being first duly sworn, depose and say the following is true:

1. I am the Law Director for the City of Pepper Pike, Ohio.
2. The City of Pepper Pike is a residential suburb of the City of Cleveland.
3. The only telecommunications providers which have wires or other facilities on poles in the City with the City's permission are the local telephone company and Adelphia pursuant to a cable franchise. These wires and facilities have been on poles within the City for more than fifteen years.
4. City officials have become concerned that the possible proliferation of numerous telecommunications facilities strung aerially in the City will become an eyesore and have a detrimental effect on the City's property values.
5. The City retained a telecommunications expert, Mike Mouser, to review and discuss the proposed plans of telecommunications companies who request permission to use the City rights-of-way.
6. Mr. Mouser advised the City that discussions with City Signal to place their facilities underground were on-going and that City Signal was amenable to placing facilities underground in conjunction with a plan of MFN to build underground conduit in Pepper Pike.
7. The City has not treated City Signal differently from other telecommunications providers seeking entry into the City.



Christopher L. Gibbon

SWORN TO BEFORE ME and subscribed in my presence this 11~~th~~ day of December,
2000.


Notary Public **KAREN A. WALDRON, Notary Public**
State of Ohio
My Commission Expires April 15, 2004.

STATE OF OHIO)
COUNTY OF Cuyahoga) SS: AFFIDAVIT

I, Mike Mouser, being first duly sworn, depose and say the following is true:

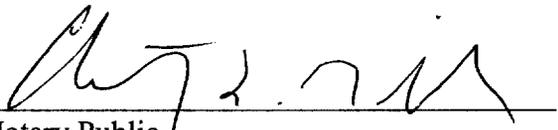
1. I have been retained by the City of Pepper Pike as a consultant on telecommunications issues.

2. In the course of my employment, I have had numerous discussions with representatives of City Signal Communications (CSC) as more fully set forth in Attachment 1 to this Affidavit.

3. It is my understanding that CSC is actively discussing with the City the placement of its fiber in underground conduit to be provided by Metromedia Fiber Network (MFN).


Mike Mouser

SWORN TO BEFORE ME and subscribed in my presence this 22nd day of ~~December~~ January,
2000.


Notary Public

CHRISTOPHER L. GIBBON, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

Memorandum

To: Chris Gibbon, Law Director
CC: Pepper Pike City Council
From: Mike Mouser
Date: 11/30/00
Re: Activity timeline with City Signal matter

- 8-11 Call to Charlie Koslosky, initial discussion
- 8-22 Met with Charlie and Bill Park, discussed City's concerns in detail, reviewed various routing options, discussed the matter with CSC's engineering firm, Ingalls Smart Assoc. CSC to investigate 2 primary options: 1) re-route the fiber around the City, and 2) estimate the cost of installing underground conduits.
- 8-30 Call to Charlie, status update. Inquired about his progress.
- 9-5 Call to Charlie, status update, underground conduit estimates not yet completed. Re-routing around the City is possible, but unlikely in Charlie's view.
- 9-6 Call to Charlie, set date for meeting between CSC, MFN, myself to discuss possible mutual arrangements.
- 9-13 Received letter from CSC declining to build underground conduits, citing excessive cost. The letter encouraged further cooperation between the City and CSC to arrive at a solution.
- 9-14 Met with Charlie, James Romasca of MFN. Discussed MFN's underground plans, reviewed CSC's drawings, arrived at reasonable route changes to accommodate both companies' requirements.
- 9-19 Received letter from MFN agreeing to install sufficient conduit underground to accommodate CSC's requirements. MFN will

- install the conduit and release ownership to the City. The City may then negotiate rates and provide use of the conduit to CSC.
- 9-23 Call to Charlie, informed him of agreement letter from MFN. He was encouraged, and stated that FCC and/or PUCO filings were not imminent; however CSC would file if an agreement could not be reached. I informed him I would discuss our progress with Council at the next Council meeting on 10-11.
- 10-11 Council meeting. Discussed CSC/MFN matter with Council, was instructed to involve the City Engineer in decisions regarding easements, roadways, routes, etc.
- 10-16 Call to Charlie, status update. Charlie still encouraged at the prospect of an underground solution, stated FCC filings were not imminent.
- 10-18 Council meeting. I informed Council that CSC was still being cooperative and I suggested again that the City convene a committee of all parties relevant to this project (i.e. CSC, MFN, City Engineer, etc.) in order to finalize agreements.
- 10-19 Call to Charlie, left message with update from Council meeting.
- 11-8 Call to Charlie, left message.
- 11-8 Council meeting. I informed Council that I would arrange a meeting between CSC and MFN in order to continue discussions, and prevent further delays.
- 11-14 Call to Charlie, left message. Purpose was to schedule meeting with MFN. No return call.
- 11-20 Call to Charlie, left message with receptionist. No return call.