

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
City Signal Communications, Inc.)	
19668 Progress Drive)	
Strongsville, OH 44136)	
)	
Petitioner)	
)	
v.)	
)	
Defendants:)	
)	
City of Cleveland Heights)	CS Docket No. 00-253
40 Severance Circle)	
Cleveland Heights, OH 44118)	
)	
City of Wickliffe)	CS Docket No. 00-254
28730 Ridge Rd.)	
Wickliffe, OH 44092)	
)	
City of Pepper Pike)	CS Docket No. 00-255
28000 Shaker Blvd.)	
Pepper Pike, OH 44092)	

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

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EXECUTIVE SUMMARY

Level 3 Communications, LLC (“Level 3”) believes that the Federal Communications Commission (“FCC” or “Commission”) should grant City Signal Communications, Inc.’s (“City Signal”) Petitions for Declaratory Rulings concerning unlawful delays by Cleveland Heights, Wickliffe and Pepper Pike, Ohio (collectively, “Cities”) in granting permits for use of public right-of-way to install fiber optic cable. In its Reply Comments, Level 3 refutes the arguments made by Municipal Commenters who oppose City Signal’s Petitions. The Comments submitted in support of City Signal’s Petitions confirm that excessive delay by municipalities in granting access to public rights-of-way is an increasing problem nationwide. Accordingly, the FCC should adopt specific procedures to help new market entrants obtain expeditious access to public rights-of-way.

Contrary to the Municipal Commenters’ assertions, the Cities’ actions pose barriers to entry in violation of Section 253(a) of the Telecommunications Act of 1996. The Concerned Municipalities incorrectly have stated that the Commission should apply a more “rigorous” standard when determining whether actions violate Section 253(a) of the Act based on whether the actions prohibit, instead of have the effect of prohibiting, a carrier from providing telecommunications services. This position disregards the plain language of the statute, as well as ignores FCC and Federal District Court caselaw in which the literal standard set forth in Section 253(a) has been applied.

Furthermore, the Concerned Municipalities mistakenly argue that City Signal has not demonstrated that the Cities’ actions have the effect of prohibiting it from providing telecommunications services. City Signal’s Petition and accompanying status charts sufficiently detail the Cities’ failure to grant City Signal’s permit applications over a period as long as 9

months, notwithstanding state law requirements that permits be issued within 30 days of request, and provide a sufficient predicate to trigger a Commission finding that the Cities' actions violate Section 253.

The Concerned Municipalities misstate the application of Section 253(c) in determining whether municipal actions may be preempted under Section 253(d). They argue that the Cities' actions are "saved" by this provision because Section 253(c) does not require that all carriers be treated alike. The Concerned Municipalities rely on legislative history that indicates the Congress contemplated and rejected a "parity" provision regarding fees. Parity with regard to fees and parity with regard to managing rights-of-way matters, however, are different matters. Furthermore, Section 253(c) requires both nondiscrimination and competitive neutrality. Since the Cities are subjecting only new market entrants like City Signal, and not incumbents, to delays in granting access to local rights-of-way, the actions are discriminatory and not competitively neutral, and are not "saved" from preemption by Section 253(c).

The Concerned Municipalities also argue that activities under Section 253(c) are excluded from the Commission's preemption authority under Section 253(d). However, the question of whether the City's actions violate Section 253 requires a two-step analysis: (i) whether the City's regulations prohibit or have the effect of prohibiting the ability of the carrier to provide telecommunications services under Section 253(a), and (ii) if so, whether they are "saved" by Section 253(c). Thus, the Concerned Municipalities misstate the law as to how it applies to Section 253 actions.

Also, the Concerned Municipalities arguments that (1) rights-of-way matters are not within the scope of federal power under the Commerce Clause, and are reserved to the states under the 10th Amendment; and (2) the Commission does not have the power to "commandeer"

state and local authorities, are far-fetched. If the Commission grants City Signal's Petitions and preempts any actions which have the effect of prohibiting City Signal from providing telecommunications services, the Commission is not compelling the Cities to do anything more or less than refrain from enforcing local regulations found to violate superior federal law.

The Commission should establish an expedited procedure, whereby a party experiencing unreasonable delays in accessing public rights-of-way could bypass the municipality and obtain an FCC-issued temporary access permit. Until resolution and issuance of a permit or other agreement containing final terms of access, the party would be able to construct its facilities in the public rights-of-way pursuant to an FCC-issued temporary permit.

In the alternative, if the Commission believes that the adoption of such a procedure is outside the scope of this proceeding, the Commission should initiate a formal rulemaking proceeding to establish rights-of-way access standards, as suggested by a Commenter. At the very least, in ruling on the Petitions, the Commission should take the opportunity to address issues related to the scope of Section 253 and local rights-of-way management that were raised in the Petitions and the Comments.

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REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC (“Level 3”), by undersigned counsel, submits these Reply Comments supporting City Signal Communications, Inc.’s (“City Signal”) Petitions for Declaratory Ruling concerning unlawful delays by Cleveland Heights, Wickliffe and Pepper Pike, Ohio (collectively the “Cities”) in granting permits for use of public rights-of-way to install fiber optic cable. The Commission should grant City Signal’s Petitions and adopt procedures to help new market entrants obtain expeditious access to public rights-of-way.

I. INTRODUCTION AND SUMMARY

In its initial Comments, Level 3 expressed strong support for City Signal's request for preemption of the Cities' requirements or actions that prohibit or have the effect of prohibiting City Signal and other new market entrants' provision of telecommunications services. As a facilities-based competitive local exchange carrier ("CLEC"), Level 3 has a vital interest in the Commission's rules and policies governing expeditious, non-discriminatory access to the public rights-of-way. The Comments submitted in support of City Signal's Petitions confirm that excessive delay by municipalities in granting competitive providers access to local rights-of-way, and discriminatory treatment of new market entrants *vis a vis* incumbent carriers, is an increasing problem with municipalities nationwide.¹

In countless instances, municipalities and cities prevent new market entrants from obtaining access to public rights-of-way in a timely and efficient manner. These delays pose barriers to entry into new telecommunications markets in violation of Section 253 of the Telecommunications Act of 1996 ("1996 Act"). Moreover, these delays are contrary to the pro-competitive, non-discriminatory goals of the 1996 Act.

In these Reply Comments Level 3 responds to the comments of the municipalities opposing City Signal's Petitions, and reiterates its support of the Petitions.² Level 3 also

¹ See *e.g.*, Comments of Level 3 at pp. 6, 11-12 and attached Affidavit (describing barriers to entry in three municipalities); Comments of Metromedia Fiber Network Services, Inc. ("MFN") at pp. 9-25 (describing barriers to entry in approximately 25 municipalities); Comments of Adelpia Business Solutions, Inc. ("ABS") at pp. 11-18 (describing barriers to entry in 8 municipalities).

² See Comments of the City of Cleveland Heights, Ohio, in Opposition to Petition for Declaratory Ruling; Comments of the City of Pepper Pike, Ohio, in Opposition to Petition for Declaratory Ruling; Comments of the City of Richmond, Virginia; Comments of Concerned Municipalities (collectively, the "Municipal Commenters").

believes that the Commission should take the opportunity to make clear that municipalities may not discriminate against new market entrants and impose delays that prevent them from obtaining timely access to public rights-of-way. To that end, the Commission should adopt specific procedures to help new market entrants obtain expeditious access to public rights-of-way.

II. CONTRARY TO THE MUNICIPAL COMMENTERS' ASSERTIONS, THE CITIES' ACTIONS POSE BARRIERS TO ENTRY IN VIOLATION OF SECTION 253(a)

A. The Concerned Municipalities Have Incorrectly Stated The Standard of Review

As a threshold matter, the plain language of Section 253(a) sets the standard that the Commission must apply in determining whether there has been a violation of Section 253. The statute states that actions that prohibit *or have the effect of prohibiting* carriers from providing services violate the provision.³ The Concerned Municipalities argue that the Commission should apply a more “rigorous” standard when determining whether actions violate Section 253(a) of the Act based on whether the actions *prohibit*, instead of *have the effect of prohibiting*, a carrier from providing telecommunications services.⁴ This position completely disregards the plain language of the statute.

The FCC and District Courts continually apply the literal standard set forth in Section 253(a). The FCC has stated that Section 253 “commands” it to “sweep away” not only express restrictions on entry, but also those state or local requirements that have the practical effect of

³ 47 U.S.C. § 253(a) (emphasis added).

⁴ See Comments of Concerned Municipalities at p. 18.

prohibiting an entity from providing service.⁵ The FCC believes that this reading “is consistent with the text of [S]ection 253(a), which declares that no state or local requirement may ‘prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.’”⁶ Similarly, in determining whether Section 253(a) broadly preempts actions by local municipalities or only those actions that strictly prohibit a carrier from providing telecommunications services, one District Court recently stated:

Neither argument is completely compelling. On the one hand, the parameters of what is considered prohibitory under Section 253(a) are not likely to be so broad as to preempt any and all local action. Congress could have achieved that result by simply preempting all local action in Section 253(a) rather than specifically dealing only with actions which “prohibit or [have] the effect of prohibiting” telecommunications services. . . . *On the other hand, the bar set by §253(a) cannot be so high as to permit local municipalities to frustrate Congress’ intent to foster a pro-competitive environment and remove local barriers to entry for telecommunications providers simply by clever statutory drafting.*⁷

City Signal has been waiting approximately 9 months for the Cities to grant its applications for permits to construct its facilities,⁸ notwithstanding that Ohio State law requires

⁵ See *In the Matter of the Public Utility of Texas*, CCB Pol 96-13, *Memorandum Opinion and Order*, FCC 97-346, 13 FCC Rcd. 3460 at ¶¶ 22, 41 (rel. Oct. 1, 1997) (hereinafter “*Texas PUC*”).

⁶ *Id.* See also *Memorandum Opinion and Order, In the Matter of The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, 14 FCC Rcd. 21,697 at ¶ 18 (1999) (hereinafter “*State of Minnesota*”); *In the Matter of TCI Cablevision of Oakland County, Inc.*, CSR-4790, *Memorandum Opinion and Order*, FCC 97-331, 12 FCC Rcd. 21,396 at ¶ 98 (rel. Sept. 19, 1997) (hereinafter “*City of Troy*”).

⁷ See *TCG New York, Inc. v. City of White Plains, New York*, 2000 WL 1873845, at *5 (S.D.N.Y. Dec. 20, 2000) (hereinafter “*City of White Plains*”) (emphasis added). See also *RT Communications, Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000); *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 8 F.Supp.2d 583, 591 (N.D. Texas 1998); *Bellsouth v. City of Coral Springs*, 42 F.Supp.2d 1304, 1307 (S.D. Fla. 1999).

⁸ See *City Signal v. Cleveland Heights*, Petition for Declaratory Ruling, at 2 (Oct. 18, 2000); *City Signal v. Wickliffe*, Petition for Declaratory Ruling, at 2 (Nov. 27, 2000), and; *City*

that the Cities act within 30 days.⁹ These actions frustrate Congress' intent to foster a pro-competitive environment and remove local barriers to entry in violation of Section 253(a). Further, the record before the Commission confirms this. For instance, in its Comments, ABS details the numerous short and long-term negative effects of municipal delays:

First, ABS may not be able to provide service to customers that have already signed-up with an expectation of receiving benefits of service on ABS' network. Second, any such failure to fulfill existing demand could have a significant negative impact on ABS' reputation and goodwill. . . . Third, inability to provide facilities-based service would mean that ABS would not receive the revenue necessary to support further construction and marketing. . . . Finally, at the most fundamental level, municipal delays prevent ABS from competing with ILECs in local telecommunications markets.¹⁰

The ability of new facilities-based market entrants to compete with entrenched incumbent telecommunications providers depends, in large part, on speed to market and the ability to construct facilities cost-effectively. Delays like those complained of in City Signal's Petitions, as well as those described by Commenters, have the *effect of prohibiting* new entrants from providing telecommunications services in violation of Section 253(a).

B. The Concerned Municipalities Have Incorrectly Stated The Level of Proof Needed To Trigger A Violation of Section 253

Contrary to the Concerned Municipalities' assertions,¹¹ City Signal's Petition and its accompanying status charts vividly demonstrate that it has been prohibited or effectively prohibited from providing services in the Cities. Courts analyzing the legality of municipalities' conduct under Section 253 consistently hold that evidence of a barrier to entry is found by

Signal v. Pepper Pike, Petition for Declaratory Ruling, at 2 (Nov. 29, 2000) (hereinafter collectively, "Petitions").

⁹ ORC Ann. Sec. 4939.01(F).

¹⁰ See Comments of ABS at p. 10.

¹¹ See Comments of Concerned Municipalities at p. 19 (stating that City Signal has "failed to demonstrate any of the factual predicates of 'prohibition' or 'effective prohibition'").

examining the municipalities' regulations, requirements, and actions with respect to granting carriers access to public rights-of-way. For example, as stated by the Federal District Court in Maryland: "[A]ny 'process for entry' that imposes burdensome requirements on telecommunications companies and vests significant discretion in local governmental decisionmakers to grant or deny permission to use the public rights-of-way 'may ... have the effect of prohibiting' the provision of telecommunications services in violation of the [Act]."¹² The Cities failure to grant City Signal's permit applications over periods extending as long as 9 months, notwithstanding state law requirements that permits be issued within 30 days of request, provide a sufficient predicate to trigger a finding by the FCC that the Cities' actions violate Section 253.

III. THE MUNICIPAL COMMENTERS HAVE INCORRECTLY STATED THE APPLICATION OF SECTION 253(c) IN DETERMINING WHETHER MUNICIPAL ACTIONS MAY BE PREEMPTED UNDER SECTION 253(d)

A. Disparate Treatment Violates Section 253(c)

Under Section 253(c) municipalities may manage their rights-of-way pursuant to their police powers "on a competitively neutral and nondiscriminatory basis."¹³ Both the Concerned Municipalities and the City of Richmond, Virginia argue that the Cities' actions are "saved" by

¹² See *Bell Atlantic-Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805, 814 (D. Md. 1999), *vacated and remanded on other grounds*, 212 F.3d 863 (4th Cir. 2000) (reviewing provisions of a telecommunications ordinance and finding that the ordinance unquestionably has the effect of prohibiting the provision of telecommunications services). See also *AT&T Communications of the Southwest v. City of Dallas*, 52 F. Supp. 2d 763, 770 (N.D. Texas 1999) (a representation by the city that "without a new franchise . . . AT&T may not offer [services] is "sufficient proof of the requisite prohibitive effect that triggers the preemptive force of [Section] 253(a)"); *AT&T Communications of the Southwest v. City of Austin*, 975 F. Supp. 928, 939 (W.D. Texas 1997) ("The threat of criminal sanctions and fines for the failure of an entity to obtain municipal consent can indubitably only be described as a prohibition").

¹³ 47 U.S.C. §253(c).

this provision because Section 253(c) does not require that all carriers be treated alike.¹⁴ They rely on legislative history which indicates that Congress considered, but eventually rejected, a proposed “parity” provision to Section 253 that would have made it illegal for cities to impose different fees on different telecommunications providers.¹⁵ They also rely on courts that have concluded that local governments do not need to treat incumbents and new market entrants identically in order to satisfy Section 253(c).¹⁶ The municipalities’ arguments fail for a number of reasons.

First, the legislative history cited addresses parity in the context of *fees*, not rights-of-way management. In *City of White Plains*, the Court specifically stated that Section 253(c) reserves the authority of local governments to regulate the rights-of-way, *as well as* their right to charge fair and reasonable compensation.¹⁷ Parity with regard to fees and parity with regard to managing the rights-of-way are different matters. Yet, the Concerned Municipalities do not suggest that Congress considered parity regarding the latter.¹⁸

¹⁴ See Comments of Concerned Municipalities at pp. 24-27; Comments of City of Richmond, Virginia at pp. 5-7.

¹⁵ See Comments of Concerned Municipalities at p. 27; Comments of City of Richmond, Virginia at p. 6.

¹⁶ See Comments of Concerned Municipalities at p. 26; Comments of City of Richmond, Virginia at p. 7.

¹⁷ See *City of White Plains* at *4.

¹⁸ The “parity provision” would have required that any fees imposed by a city on carriers be exactly equal, regardless of the extent to which one provider needed to impose on the rights-of-way compared to another. See *TCG Detroit v. City of Dearborn*, 16 F. Supp.2d 785, 792 (E.D. Mich. 1998). There are circumstances when conditions applied to incumbents are different than those applied to new market entrants, but the disparate treatment is aimed at ensuring that incumbents do not have an unfair marketplace advantage over new market entrants. See *Texas PUC* at ¶ 3 (emphasizing the significance of the ability of competitors to compete in a fair and balanced legal and regulatory environment).

Second, as noted by Level 3 in its Comments, the legislative history indicates that rights-of-way management activities permissible under Section 253(c) must be applied consistently to all carriers.¹⁹ Furthermore, the FCC *has* recognized that states may not have to treat all entities in the same way for such treatment to be deemed competitively neutral, *so long as* the regulatory authority demonstrates that there are differences in circumstances that warrant disparate treatment.²⁰ As noted, Section 253(c) requires both nondiscrimination and competitive neutrality. Both terms must be construed in the overall context of the Act, the express purpose of which is to foster market entry by competitive telecommunications providers, by prohibiting state and local policies that favor entrenched incumbents. Since the Cities are subjecting only new market entrants like City Signal, and not incumbents, to delays in granting access to local rights-of-way, and since the Cities have not demonstrated a valid rationale for disparate treatment of incumbents and new carriers, the Cities actions are discriminatory and not competitively neutral, and are not saved from preemption by Section 253(c).

B. Concerned Municipalities Misconstrue Application of Section 253(c) and (d)

The Concerned Municipalities also argue that activities under Section 253(c), rights-of-way management and compensation requirements, are excluded from the Commission's preemption authority under Section 253(d). They state:

Section 253(d). . . only allows the Commission to preempt the enforcement of regulations found to violate or be inconsistent with Sections 253(a) and 253(b) and the only to the

¹⁹ See *Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCB Pol 96-10, Memorandum Opinion and Order, 11 FCC Rcd. 13,082 at ¶ 39 (citing 141 Cong. Rec. 58172 (daily ed. June 12, 1995, statement of Sen. Feinstein)).

²⁰ *State of Minnesota* at ¶ 52. See also *Cablevision of Boston, Inc. v. Public Improvement Commission of the City of Boston*, 184 F.3d 88 (1st Cir. 1999) (stating that requirement of competitive neutrality means municipalities must be even-handed, but does not require them to level the playing field).

extent necessary to correct the violation or inconsistency. Right-of-way management and compensation matters described in Section 253(c) are excluded from the Commission's preemption authority under Section 253(d).²¹

The Concerned Municipalities misstate the law as to how it applies to Section 253 actions. As stated in *City of White Plains*, “the question of whether the City's actions violate §253 of the [Act] involves a two-step analysis: (i) whether the City's regulations ‘prohibit or have the effect of prohibiting’ the ability of [the carrier] to provide telecommunications services under §253(a), and (ii) if so, whether they are ‘saved’ under §253(c).”²² The Cities' delay in granting City Signal permits to access the rights-of-way violates Section 253(a) and is not saved under Section 253(c).²³ Thus, the Cities' actions are subject to preemption under Section 253(d), contrary to the assertion of the Concerned Municipalities.²⁴

C. Concerned Municipalities' Constitutional Arguments Are Without Merit

The Concerned Municipalities arguments that (1) rights-of-way matters are not within the scope of federal power under the Commerce Clause, and are reserved to the states under the 10th Amendment; and (2) the Commission does not have the power to “commandeer” state and local authorities,²⁵ are also far-fetched. If the Commission grants City Signal's Petitions and preempts any actions which have the effect of prohibiting City Signal from providing telecommunications

²¹ See Comments of Concerned Municipalities at p. 13.

²² See *City of White Plains* at *5. See also *Prince George's County* at 814.

²³ The burden of demonstrating that the requirements fall under the safe harbor under 253(c) lies with the City. See *City of White Plains* at *16. The Cities have not met this burden since they are not treating City Signal in a competitively neutral and nondiscriminatory manner.

²⁴ See *City of Troy* at ¶ 101 (stating that Section 253(d) permits FCC to preempt enforcement of legal requirements to correct violations or inconsistencies with Section 253).

²⁵ See Comments of Concerned Municipalities at pp. 7-11.

services, the Commission is not compelling the Cities to do anything more or less than refrain from enforcing local regulations found to violate superior federal law.²⁶

IV. THE COMMISSION SHOULD ADOPT PROCEDURES TO HELP NEW MARKET ENTRANTS OBTAIN EXPEDITIOUS ACCESS TO PUBLIC RIGHTS-OF-WAY

The Commission has recognized that Section 253 is a critical component of Congress' pro-competitive deregulatory national policy, stating that "Congress intended primarily for competitive markets to determine which entrants shall provide telecommunications services demanded by consumers, and by preempting under [S]ection 253 sought to ensure that [s]tate and local governments implement the 1996 Act in a manner consistent with these goals."²⁷

As evidenced by the Comments in this proceeding, not only should the Commission grant City Signal's Petitions, it also should adopt procedures to help new market entrants obtain expeditious access to public rights-of-way. The record establishes that new market entrants continue to experience burdensome, extensive, and unreasonable delays when attempting to access the public rights-of-way throughout the country. These delays prevent them from entering new telecommunications markets in a timely manner, and from providing American consumers with new services and lower prices. The Commission should, in the context of granting City Signal's Petitions, act now to ensure that the pro-competitive, non-discriminatory goals of the Act are met.

The Commission should establish an expedited procedure, whereby a party experiencing delays in accessing public rights-of-way could bypass the municipality and seek relief directly

²⁶ The FCC has stated that a state may not impose any requirement that is contrary to the terms of Section 253 or that stand as an obstacle to the accomplishment of the objectives of Congress. *See Texas PUC* at ¶ 52.

²⁷ *See City of Troy* at ¶ 102.

from the Commission. For example, if a party does not receive a permit or a franchise agreement or other like authorization required by a municipality within forty-five (45) days of request, the party may apply directly to the FCC to obtain a “temporary” permit to access the municipality’s rights-of-way. This permit would allow the party to immediately begin construction and installation of its facilities. Subsequently, the FCC would docket the dispute between the party and municipality for resolution of outstanding issues, such as compensation and fees, on an expedited basis using a mechanism such as the Enforcement Division’s “Rocket Docket.” Until resolution and issuance of a permit or other agreement containing final terms of access, the party would be able to construct its facilities in the public rights-of-way pursuant to the FCC’s temporary permit.

In the alternative, if the Commission believes that the adoption of such a procedure is outside the scope of this proceeding, the Commission should initiate a formal rulemaking proceeding to establish rights-of-way access standards, as MFN suggests in its Comments.²⁸ At the very least, in ruling on the Petitions, the Commission should take the opportunity to address issues related to the scope of Section 253 and local rights-of-way management that were raised in the Petitions and the Comments. As the Commission has recognized, in analyzing Section 253 cases, “we must remain mindful of the fundamental purpose of the Act: to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new technologies.”²⁹ The record indicates that the Cities, as well as numerous municipalities throughout the country, are not acting in a manner consistent with the fundamental purpose of

²⁸ See Comments of MFN at p. 32.

the 1996 Act. Accordingly, Level 3 believes that Commission action is needed to ensure swift access by new entrants to public rights-of-way in the Cities and in municipalities throughout the country.

V. CONCLUSION

The Commission should grant City Signal's Petitions and preempt any statutes, regulations, or other requirements of the Cities that prohibit or have the effect of prohibiting City Signal's or other new entrants' provision of telecommunications service by imposing excessive delay on the construction of facilities. The Commission also should adopt procedures to help new market entrants obtain expeditious access to public rights-of-way. Without Commission action in this matter, true, open competition will continually be threatened as new market entrants encounter substantial delays in their continuous attempt to deploy telecommunications facilities in the Cities and in new markets throughout the country.

Respectfully submitted,

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Dated: February 14, 2001
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²⁹ See *City of Troy* at ¶ 110.