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MILLER & VAN EATON
P. L. L. C.

MATTHEW C. AMES
KENNETH A. BRUNETTI†
FREDERICK E. ELLROD III
MARCI L. FRISCHKORN*
MITSUKO R. HERRERA†

*Admitted to Practice in Virginia Only
†Admitted to Practice in California Only

Incorporating the Practice of Miller & Holbrooke

1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4320
TELEPHONE (202) 785-0600
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.
44 MONTGOMERY STREET
SUITE 3085
SAN FRANCISCO, CALIFORNIA 94104-4804
TELEPHONE (415) 477-3650
FAX (415) 398-2208

WWW.MILLERVANEATON.COM

WILLIAM L. LOWERY
WILLIAM R. MALONE
NICHOLAS P. MILLER
HOLLY L. SAURER‡
JOSEPH VAN EATON

‡Admitted to Practice in Maryland Only

OF COUNSEL:
JAMES R. HOBSON
JOHN F. NOBLE

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FEB 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 14, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: CS Dockets 00-253, 254 and 255
City Signal Communications Petition for Declaratory Ruling

Dear Madame Secretary:

Submitted herewith for filing in the referenced proceeding are an original and six copies of the Reply Comments of the "NATOA Respondents," a group consisting of NATOA and 10 local governments. Appended to the main text are affidavits, declarations or statements from seven of these local governments: Chandler, AZ; Culver City, Glendale, Richmond and Walnut Creek, CA; Jefferson Parish, LA; and Newton, MA.

Please direct any questions to the undersigned.

Sincerely,

James R. Hobson

James R. Hobson
Counsel for the NATOA Respondents

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FEB 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
City Signal Communications, Inc.	)	
Petition for Declaratory Ruling	)	CS Docket Nos. 00-253, 254, 255
Concerning Use of Rights of Way	)	
for Access to Poles in Cleveland	)	
Heights, Wickliffe,	)	
and Pepper Pike, Ohio	)	

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS; CHANDLER, AZ;
BURBANK, CULVER CITY, GLENDALE, RICHMOND
AND WALNUT CREEK, CA; JEFFERSON PARISH, LA;
NEWTON, MA; DEARBORN, MI; AND CLAYTON, MO.[1]

The National Association of Telecommunications Officers and Advisors ("NATOA"), together with ten local governments improperly attacked in this narrow proceeding, hereafter "NATOA Respondents," submit this reply to the comments of several competitive telecommunications carriers. Our focus is on the comments of Metromedia Fiber Network Services ("MFNS"), Adelphia Business Systems ("ABS") and Level 3 Communications ("Level 3"), whose attempted interpleading of more than 40 communities not named in the City Signal petition is an abuse of even the Commission's relaxed processes. As to the ten communities joined here, the complaints are devoid of substance and should be denied, if not stricken or dismissed outright.

[1] The City of Clayton also has filed separate Reply Comments addressing specific claims made by one of the carriers in this proceeding.

The extraneous comments of MFNS, ABS and Level 3 should be stricken or dismissed.

The Commission's Public Notices in this proceeding defined the following common issue in the City Signal petition against three Cleveland suburban communities: Whether there is any municipal "pronouncement, rule, regulation or ordinance . . . that prohibits or has the effect of prohibiting the use of public rights of way to string aerial fiber optic cable on existing utility poles for telecommunications purposes," such as to violate Section 253 of the Communications Act.[2] The MFNS, ABS and Level 3 comments sweep far beyond these boundaries.

MFNS reads the Public Notices as if "[t]he Commission has given all telecommunications service providers a welcome opportunity . . . inviting comments on the difficulties they are having in obtaining lawful and reasonable access to public rights-of-way." (Comments, 2) Having grossly misstated the nature of the proceeding, MFNS recounts its experiences with 34 local governments – some of which were served, others not[3] – and asks for the following over-broad and unwarranted relief:

> In these proceedings, MFNS urges the Commission to set forth the sphere of local authority to regulate access to public right-of-way, including what constitutes appropriate time, place and manner of right-of-way management.

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[2] DA 00-2870, 2871, 2872, December 22, 2000.

[3] Commission rules require that all petitions for rulemaking or declaratory ruling seeking preemption of local authority under Section 253 or any other pertinent statute be served "not only on those state[s] and localities that are the subject of the petition but also on those whose actions are identified as warranting preemption." Amendment of Ex Parte Rules, 14 FCC Rcd 18831, 18838 (1999). The Commission went on to say that pleadings not served will be dismissed as defective. *Id.* at 18839. So far as we can determine from the MFNS service list, 28 named communities were served, six not served. Copies of the ABS and Level 3 comments obtained from the FCC's Electronic Comment Filing System showed, respectively, service on the Commission only or no service at all.

(Comments, 32) As will be demonstrated below for the NATOA Respondent communities, MFNS has not begun to create the record to justify such relief. Its claims are of a descriptive, hit-and-run character, unsupported by affidavit or declaration.

Apparently acknowledging the weaknesses in its comments, MFNS asks that the record here be combined with that of the Notice of Inquiry ("NOI") in the joined dockets WT 99-217 and CC 96-98 to "initiate a rulemaking that will address the numerous and troublesome issues that providers face for access to the public right-of-way." (Comments, note 2) The Commission of course is aware of the pendency of the NOI record and is prepared to act separately on it.[4] None of the carrier comments here, however, adds any substance or urgency to that undertaking.

Like MFNS, ABS (Comments, II) and Level 3 (Comments, IIC) take various local governments to task for alleged sins of omission and commission in right-of-way management, but with no pretense of the notification required by the FCC's rules. (Note 3, *supra*) Like MFNS, ABS asks not only that the City Signal petitions be granted but also that the "delay and discrimination" ABS claims to have suffered in other communities be declared unlawful. (Comments, 29) While Level 3 properly confines its request for relief to the Cleveland cities subject to the City Signal petitions, it remains to be seen whether a Commission finding in favor of City Signal would be of any help to Level 3 in its named cities of Burbank, Culver City and Vernon, California.

For the reasons discussed above, the comments of MFNS, ABS and Level 3 adverse to communities other than the Cleveland suburbs implicated here should be stricken or dismissed as procedurally defective. For the ten NATOA Respondent communities, the MFNS complaints, if not stricken or dismissed, must be denied for lack of merit.

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[4] First Report and Order, FCC 00-366, released October 25, 2000, note 2.

The claims against the NATOA Respondents
are inaccurate, legally erroneous and/or out-of-date.

California Municipalities

Before singling out Glendale, Richmond, Walnut Creek and other California communities for "special mention," (Comments, 5) MFNS should have taken more care in its statements about California law. In comments accompanying his attached affidavit, Paul Valle-Riestra, Assistant City Attorney for Walnut Creek, noted that telephone corporations in California are not required to obtain local franchises for the installation of "telephone lines." However, these telephone corporations are only exempted for the non-voice (*e.g.* video or data) use of their lines to the extent that such uses are in connection with or facilitate communication by telephone. *Television Transmission, Inc. v. Public Utilities Commission*, 47 Cal. 2d 82 (1956). Further, according to Valle-Riestra, lines which are used by companies for internal purposes or by subsidiaries, as opposed to lines used in offering service to the public, also require a local franchise.[5]

This analysis is repeated in the attached affidavits of Assistant City Attorneys for Glendale (Sansone, paragraph 4) and Richmond (Trice, paragraph 6). It explains the legitimate interest of California municipalities in the status and business intentions of potential right-of-way users. Also clear from the testimony of the City lawyers is that authorization to occupy the public right-of-way – through encroachment permits or other means – is an accepted regulation of time, place and manner existing independently of the franchise exemption for telephone corporations.

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[5] *Inyo County v. Hess*, 53 Cal. App. 415 (1921); *People v. Orange Co. F&M Assn.*, 56 Cal. App. 205 (1922); *GTE Satellite Corp.*, 9 CPUC 2d 276 (1982).

The City of Burbank[6] is faulted by MFNS (Comments, 18) for charging fees of more than $3 per linear foot to occupy the public right-of-way, but the carrier offers no evidence that the fee exceeds a legitimate recovery of expenses for permitting entry to and maintaining the public property.

Burbank also is criticized by Level 3 in an affidavit of one of the carrier's program managers. (Comments, 18) In the roughly four years competitive carriers have been seeking permits, the City consistently has required signed encroachment agreements for conduit or fiber placed in the right-of-way. Level 3 representatives would not have been told otherwise.[7]

As explained in the earlier reference to the Glendale and Richmond affidavits, California communities routinely inquire into the nature of a telecommunications applicant's business and intended service area to make sure it comports with state certification. This is the legitimate context for the "questionnaire" referenced in the Level 3 affidavit.

The assertion of 14 months delay from initial submission of engineered drawings to grant of Level 3's permit is inaccurate and incomplete. Level 3's initial submission of drawings was lacking. Not until many months later did the City receive all the needed documentation. The process was further delayed by Level 3's repeated and numerous requests – by two separate attorneys – for changes to Burbank's standard agreement. The carrier was even slow in responding to the very changes to the standard agreement proposed by the City solely to accommodate Level 3.

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[6] This discussion is based on conversations with Burbank Assistant City Attorney Sheri Ungar. The substantive responses of Culver City, Glendale, Richmond and Walnut Creek are contained in their respective affidavits or declarations.

[7] The Level 3 affidavit refers variously to "City staff," 'the department," "the Public Works Department," and the "City Attorney," so it might be difficult to trace back to all the possible conversations. In any event, it appears from the affidavit that Level 3 waited no longer than the three-month interval from February to May 1999 to receive firm word that an encroachment permit would be required.

Furthermore, it was Level 3 that sought the "joint-build," a protracted process due in part to the fact that Level 3's partner, MFNS, did not have the state authority required to begin local construction. (Sansone affidavit, paragraphs 6 and 7). In addition, the City granted Level 3 a significant benefit owing to the joint-build arrangement. Each partner paid only one-half the City fees it would have been charged for a separate build.

To summarize, in securing its encroachment permit Level 3 was asked for no more than other carriers now using Burbank's rights-of-way, and was even given preferential treatment with respect to City fees. Allowing for the natural consumption of time in a process that is technically and legally demanding, additional delay was largely of Level 3's own making.

Chandler, Arizona

As with the California communities, Chandler found itself faced with carrier claims that state certification was not required as a condition to applying for local license to use the rights-of-way. That debate appears to have been mooted by MFNS's eventual application to the state (Coulter affidavit, paragraph 6), and the parties reached a creative accommodation to the carrier's mixed status. (Coulter, paragraph 8) Contrary to MFNS's implications of extortion, the occupancy price of $1.47 per square foot was negotiated amicably, with the City declining the carrier's in-kind offer of "free fiber." (Coulter, paragraph 7) MFNS' exaggerated claims that it was forced to act as the City's contractor, and underpaid for the task, are thoroughly contradicted by the Coulter affidavit at paragraphs 8-10.

Dearborn, Michigan

MFNS first complains about having to sign the City's Franchise Agreement, which includes a right-of-way fee based on a percentage of gross revenues. (Comments, 10) The

franchise requirement and the form of the fee have been upheld as compatible with federal law, particularly Section 253 of the Communications Act, 47 U.S.C.§253.[8]

MFNS next emphasizes that the gross revenues fee upheld as to form by the Sixth Circuit has been "struck down by a state court" as violative of state law. Michigan law requires that such right-of-way fees be limited to the "fixed and variable costs to the local unit of government in granting a permit and maintaining the right-of-way." MCL 484.2253 The 1999 state court order cited by MFNS (Comments, 11) was on motions for reconsideration and summary judgment which did not dispose entirely of the state law questions. After trial, the state court ruled that Dearborn's fixed and variable costs must be limited to $2500 for the issuance of a permit and $500 annually for maintenance. Judgment, 98-803937 CK, December 21, 2000. This Judgment in favor of TCG Detroit will be applied by the City in granting MFNS a right-of-way permit, pending the outcome of a planned appeal.

Dearborn was found not to have violated state law requiring right-of-way permits to be issued in 90 days. In an oral opinion rendered the same day as the Judgment, the court stated:

> Both parties had different positions on what the fixed and variable costs were . . . Clearly, there was no specific refusal to issue a permit by Dearborn. TCG just decided it was not going to comply with their demands to get a permit. . . .TCG Detroit has not met its burden in showing that there was a constructive denial of the permit. (Transcript, 7-8)

Jefferson Parish, Louisiana

MFNS complains (Comments, 12, and Exh. B) of excessive fees for use of public rights-of-way. In its attached Reply Comments, the Parish explains the aging, crowding and incidents of damage which have led it to charge as it does – a rate equal to that charged by neighboring Orleans Parish. The "formal protest" at Exhibit B, in which Section 253 of the Communications

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[8] *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 624-25 (6th Cir. 2000).

Act is invoked without explanation,[9] illustrates perfectly the regrettable choice of MFNS, ABS and Level 3 to complain on the cheap by hit-and-run accusations in a proceeding that was opened to consider narrowly the matter of pole attachment practices by certain Cleveland suburbs. The carriers all know how to file Section 253 petitions if they choose. They should not be allowed to piggyback on City Signal's complaints against Cleveland.

Newton, Massachusetts

The claims of MFNS (Comments, 15-16) are like night and day to the attached affidavit of Newton Chief Administrative Officer Michael Rourke. The lump sum payment, placed in quotes by MFNS to make it seem less than voluntary, turns out to have been the carrier's own initiative. (Rourke affidavit, paragraph 9) The payment was not included in "public conditions" because it was part of a compromise in settlement, not because there was any desire or need to hide it under the table. The conduit for municipal use is a universal requirement in the ordinance, not a special imposition on MFNS, and even then was not required for the full route of the carrier's facilities. (Rourke affidavit, paragraph 11) Finally, the City had every right to impose restoration standards consistent with state law, in preference to lesser guidelines published by one of the state's administrative agencies.

CONCLUSION

For the reasons discussed above, the assertions of MFNS, ABS and Level 3 which sweep beyond the issues raised by City Signal against three Cleveland communities should be stricken or dismissed. As to substance, the extraneous claims are shown by the attached affidavits,

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[9] Section 253 precludes state and local governments or legal requirements from prohibiting the rendering of telecommunications service. MFNS secured its local permits, after delays the Parish believes were largely of the carrier's own making. It is paying the same per-foot price for occupancy in both Jefferson and Orleans Parishes. How it has been prohibited from serving is not, and probably cannot be, explained.

declarations and statements of targeted municipalities – and by the separately-filed reply of Clayton, Missouri – to be devoid of merit and worthy only of denial. The direct testimony of city officials demonstrates beyond any doubt that local governments are handling the onslaught of local telecommunications competition with diligence, with patience and with a recognition of the benefits of multiple sources of innovative service.

Respectfully submitted,

NATOA RESPONDENTS

By _____

James R. Hobson
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 785-0600

February 14, 2001

THEIR ATTORNEY

CERTIFICATE OF SERVICE

The foregoing Reply Comments of the NATOA Respondents were served today by mail on the following:

Nathaniel Hawthorne
Counsel for City Signal
27600 Chagrin Boulevard
Cleveland, Ohio 44122

Karen Nations
Metromedia Fiber Network Services
One Meadowlands Plaza
East Rutherford, NJ 07073

Burt A. Braverman
Counsel for ABS
Cole Raywid & Braverman, LLP
1919 Pennsylvania Ave. N.W., #200
Washington, D.C. 20006

Jeffrey M. Karp
Counsel for Level 3
Swidler Berlin Shereff Friedman
3000 K Street N.W., #300
Washington, D.C. 20007-5116

February 14, 2001

James R. Hobson

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AFFIDAVIT OF

CITY OF CHANDLER COMMUNICATIONS MANAGER

STATE OF ARIZONA)
) ss.
County of Maricopa)

Margaret Coulter, being duly sworn, upon her oath, deposes and says:

1. I am the Communications Manager of the City of Chandler, an Arizona municipal corporation, located in Maricopa County, Arizona. My job duties include negotiating and administering cable, telecommunications and other licenses and franchises.

2. On August 24, 1999, I met with representatives from Metromedia Fiber Network, Inc. (MFN) who represented MFN to be a company that constructed conduit and fiber infrastructure to lease or sell to a variety of companies, possibly including companies providing telecommunications services. MFN stated they had no intent to provide any telecommunications services directly. At that time MFN did not possess a Certificate of Convenience and Necessity from the Arizona Corporation Commission (CC &N), nor did they intend to apply for one due to the nature of their business. The description of the nature of their business never changed throughout the discussions that ultimately led to the issuance of a license.

3. At the August 24th meeting, I told MFN that a new City ordinance related to licensing would require companies to show proof of a CC & N or other proof that they were a telecommunications company if they intended to apply for a telecommunications

license. Otherwise we would be issuing only a Fiber Optics License or license to use the City right of way.

4. On September 3, 1999, a letter was addressed to me applying for a license for MFN for a fiber optics communications system in Chandler. This letter was accompanied by a proposed draft for a fiber optics license agreement. These documents were submitted by Lewis & Roca, attorneys for MFN, and hand-delivered to me on September 7, 1999.

5. The MFN application stated that the company did not hold a Certificate of Public Convenience from the Arizona Corporation Commission. They contended that "Metromedia does not need a certificate of public convenience and necessity due to the nature of its operations in Arizona." They did not provide any documentation as to being a telecommunication company.

6. We later found out through our own research that MFN applied for a CC & N on September 3, 1999, and subsequently received it. Notice of the filing and receipt was not submitted to the City of Chandler for our application process.

7. In the negotiations with MFN, the City began by asking payment of $2.20 per linear foot of cable installed. MFN countered that $2.20 was too high and asked to pay a lower fee. Agreement was reached at $1.47 per linear foot. MFN willingly agreed to pay this amount and did not contend they were providing intrastate telecommunication services and thus exempt from the per linear foot fee. Specifically, Lewis & Roca Attorney Tom Campbell representing MFN stated that MFN did not want to be limited in their options and they could not guarantee that their infrastructure would be used

solely for intrastate telecommunications, and for that reason MFN was willing to pay the per linear foot fee. At one meeting MFN project manager Troy Fluegel asked the City what kind of fiber we would also want "given" to the City, but the City did not request nor accept free fiber.

8. On June 14th, the Chandler City Council voted on the "Agreement for the Use of Public Property" which gave MFN the expanded authority of both a "telecommunications license" and a "fiber optics and other communications license". Chandler's City Council, knowing that the City was about to embark on a traffic signalization project that would necessitate laying fiber along the same route proposed by MFN, asked to see if we could arrange for the co-location for this project, thereby reducing the impact on the City's street due to construction. However the City Council stipulated, and it was incorporated into the agreement, that the City's joining in the project must "not cause additional cost or unreasonable delay to Metromedia" and that if there are additional costs, the City must pay those additional costs.

9. MFN dictated the costs to the City for the installation of the City's conduit, based on the charge from MFN's contractor.

10. Again, the City's co-location project was for a traffic signalization project—a non-telecommunication use. This serves to illustrate that MFN's facilities are not designed to solely accommodate telecommunications companies. We have since referred a cable company, an interstate telecommunications company, and a photo red-light company to them for possible leasing arrangements. MFN's flexible agreement should serve them well given the many variables into today's changing technology.

DATED: 2/13/01

Margaret Coulter

Margaret Coulter

SUBSCRIBED AND SWORN to before me this 13th day of Feb., 2001, by Margaret Coulter, Communications Manager of the City of Chandler, Arizona.

Notary Public

My Commission Expires:

OFFICIAL SEAL
JEANNE BOSARGE
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
SEPTEMBER 20, 2002

FACSIMILE TO BE REPLACED BY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re: City Signal Communications, Inc. Petition for Declaratory Ruling Concerning Use of Public Rights of Way for Access to Poles in Cleveland Heights, Ohio	CS Docket No. 00-253
In re: City Signal Communications, Inc. Petition for Declaratory Ruling Concerning Use of Public Rights of Way for Access to Poles in Wickliffe, Ohio	CS Docket No. 00-254
In re: City Signal Communications, Inc. Petition for Declaratory Ruling Concerning Use of Public Rights of Way for Access to Poles in Pepper Pike, Ohio	CS Docket No. 00-255

Declaration of Laura D'Auri in Support of Comments of NATOA et al.

I, Laura D'Auri, declare:

1. I am a Deputy City Attorney for the City of Culver City ("Culver City"). I have held the position with the city for five years. Currently, one of my primary job duties is Telecommunications. I am familiar with the issues involved in telecommunications law and am a member of the city's Telecommunications Task Force and a Board Member of SCAN NATOA.

2. Culver City is cited by Metromedia Fiber Network Services, Inc. ("MFNS"), Level 3 Communications ("Level3") and Adelphia Business Solutions ("Adelphia") in their comments, stating that Culver City is an example of cities supposedly interfering with the development of infrastructure. The facts, as shown below, demonstrate that Culver City is progressively and actively pursuing its policy of encouraging competition and welcoming entrants in the telecommunications field.

3. Culver City understands the importance of telecommunications and encourages the development of telecommunications infrastructure. At the direction of the Chief Administrative Officer, in March 2000, Culver City established an informal Telecommunications Task Force ("Task Force") to look into various telecommunications issues, including the development of pertinent ordinances and ways to encourage infrastructure development. The six-member Task Force consists of the Assistant Chief Administrative Officer, Community Development Director, Deputy City Attorney, Deputy Public Works Director, Deputy City Treasurer and Information Technology Telecommunications Analyst. Four of the Task Force members have regularly attended seminars to increase our knowledge of telecommunications matters, and are in regular communication with the other task force members and the industry to further city and industry goals and objectives.

4. In approximately March or April 2000, MFNS submitted proposed permit plans to Culver City's Engineering Department.

5. On or about May 17, 2000, an initial preliminary meeting was held in Culver City with representatives from MFNS and Level 3. Also present were representatives from Fluor Global Systems ("Fluor") who are the engineering representatives for MFNS. All participants at the meeting were placed on a telecommunications/utility mailing list and have been sent regular notification of the city's telecommunications time frame and proposed ordinances relating to telecommunications permits and installations. Level 3 and MFNS indicated that they intended to joint trench and to pass through Culver City.

6. MFNS has a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("CPUC"). The CPCN Culver City has in our files states that MFNS is a provider of inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier.

7. Level 3 Communications has a CPCN from the CPUC to operate as a facilities-based competitive local carrier and to offer resold local exchange services within California. They are also granted a franchise for intrastate interLATA and intraLATA authority on a state-wide basis.

8. The mitigated negative declarations state that franchisees are required to comply with a variety of local government requirements, including complying with all "local plans, policies and regulations" and obtaining and complying with all local encroachment permit requirements.

9. On or about May 31, 2000, City staff met with representatives from Adelphia Business Solutions ("Adelphia") for initial discussions as to Adelphia's plans. To my knowledge, Culver City does not currently have a CPCN on file for Adelphia.

10. In July 2000, an incomplete Rights-of-Way questionnaire (which was based on a format used by other California cities) was received from Level 3 through Fluor. The purpose of having the questionnaire was to obtain information about the types of installations requested, in keeping with management of the public rights of way, as allowed under both state and federal law.

11. On July 7, 2000, the City met with representatives from the utility and telecommunications companies to review the proposed Rights-of-Way Management Plan.

12. On July 17, 2000, the City Council adopted an Urgency Ordinance and a Resolution establishing a Rights-of-Way Management Plan. The ROW Management Plan ("ROW Plan") incorporated comments and changes submitted by utilities, telecommunications and cable industry representatives.

13. The stated goals of the ROW Plan are to ensure the public health, safety and welfare; To exercise the authority of the City of Culver City to manage the public Rights-of-Way as to the Time, Place and Manner in which the Rights-of-Way are accessed; To minimize utility installations in heavily occupied Rights-of-Way; To minimize utility installations in areas with high volume vehicular traffic; To place utilities in areas where there is ease of maintenance, with minimum disruption to vehicular traffic, pedestrian flow and/or on-street parking; To minimize disruption of the Rights-of-Way by coordinating private Facilities and utility installations with City Projects and the City's Pavement Management Master Plan; To ensure the structural integrity, public safety, ride quality and aesthetic properties of the existing infrastructure within the Rights-of-Way, and the surrounding City environment; To prevent unnecessary financial burden to the taxpayers of Culver City through management of private facility repairs and excavations in the public Rights-of-Way; To manage the public Rights-of-Way on a competitively neutral and non-discriminatory basis; To ensure compliance with all Municipal,

State and Federal Laws, including CEQA, NPDES Permit requirements and FCC Emission Standards; To recover allowable fees for the administration of the public Rights-of-Way.

14. In August 2000, a draft of the umbrella Telecommunications Ordinance was circulated to the telecommunications and cable industry representatives, and to the utilities, for their review.

15. On August 3, 2000, Fluor submitted the missing information for Level 3's questionnaire, and the CPCN for Level 3.

16. In September 2000, the City Council adopted the umbrella Telecommunications Ordinance, which took effect on October 25, 2000.

17. In November 2000, the City issued a Request for Qualifications (RFQ) for telecommunications advisors, and subsequently contracted with a general telecommunications advisor, and with outside counsel for telecommunications legal issues.

18. On or about November 16 and November 17, 2000, and after multiple requests from the City's Engineering Division for revised plans, Fluor submitted exactly the same plans for MFNS to Culver City's Engineering Division for review. As the plans did not reflect the required route revision, Engineering Division once again requested revised plans.[1]

19. For many years, Culver City has had an annual moratorium on trenching during the holiday season, beginning two weeks before Thanksgiving, and continuing through January 1.

20. During January 2001, the Culver City Task Force reviewed and commented on a proposed cable ordinance and a "pass through" ordinance. The pass through ordinance provides guidance and conditions for telecommunications and cable systems passing through the community.

21. The Pass Through Ordinance is scheduled for Council consideration during the February 26, 2001 meeting. As soon as the Pass Through Ordinance is adopted, Culver City will continue to process any permit requests received, provided that applications for permits have been submitted.

22. The Cable Ordinance is scheduled for Council consideration in March 2001.

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[1] The original plans, which were the same ones submitted twice (November 16 and November 17, 2000), proposed a route down Sawtelle Boulevard. However, the street significantly narrows into a residential neighborhood, and there is a prohibition against major night time construction. In addition, there is a major CalTrans freeway ramp at that point, and CalTrans will not permit a major ramp to be shut down for any significant period of time.

23. In their comments to the FCC, MFNS cites delay in processing their permits (pages 20-21) and then launches into a discussion about problems in Kansas. Again, MFNS and Fluor have been kept fully apprised of the proposed time frame for development of ordinances to protect and manage the rights-of-way, and has written no letter of objection.

24. Level 3 claims that they will have to wait for an "unknown period of time" before they can begin their installation. (Page 17 of Level 3's comments.) However, Level 3 has been advised all along of the progress of the ordinances and has not lodged objections. Adelphia claims that Culver City has unduly delayed its entry into the City. (Page 13 of Adelphia's comments.) However, the time frame as shown above demonstrates the city's commitment to both promoting telecommunications competition as well as effectively managing the public Rights-of-Way.

25. On February 13, 2001, the City met with representatives from Level 3, Fluor and Metromedia to discuss the continuation of review of their requests to enter the Rights-of-Way. The representatives expressed satisfaction with the City's proposal of a time line to formally receive applications and continue through the permitting process with a projected completion date of approximately April 2001.

26. At the end of the February 13, 2001 meeting, representatives from MFN stated that they would send the city a letter retracting the plans submitted on November 17, 2000, and replacing them with plans reflecting the revised route suggested by the Deputy Public Works Director.

27. Culver City is a small city of approximately 40,000 residents, and measures approximately five square miles. Like many other smaller cities, we have been trying to utilize our existing staff and consultants to immerse ourselves in this complex field in order to provide opportunities for the telecommunications and cable industry, while still protecting and managing the public Rights-of-Way. In the beginning, we were not really aware of how complex the telecommunications field is. As matters became clearer, we hired outside counsel as our legal telecommunications and cable consultants, and have been pro-active in the telecommunications arena.

28. With the adoption of the Pass Through Ordinance on February 26, 2001, and the development of a telecommunications application, the completion of processing of the permits for pass-through entities can take place forthwith, and the City is ready to process Adelphia's

request for entry. MFNS, Level 3 and Adelphia have been apprised of the time frame all along, and have not expressed objections. Therefore, it seems rather untimely that complaints have been filed at this late hour, when completion of permit processing is imminent. In addition, it is not relevant for California municipal issues to be boot-strapped into comments regarding an Ohio proceeding.

29. In addition to protection of the public Rights-of-Way, Culver City is strongly committed to growth of business and industry and looks forward to working with telecommunications and cable companies to provide ever greater services to our city, our state, and the nation.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 13, 2001

Laura D'Auri

Laura D'Auri

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Cleveland Heights, Ohio	CS Docket No. 00-253
In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Wickliffe, Ohio	CS Docket No. 00-254
In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Pepper Pike, Ohio	CS Docket No. 00-255

Declaration of John E. Nowak in Support of Comments of NATOA et al.

I, John Nowak, declare:

1. I am the Assistant Chief Administrative Officer for the City of Culver City ("Culver City"), and a member of the City's informal Telecommunications Task Force.

2. During the period between October 2000 and January 2001, I personally communicated with the following:

A. 10/16/00: I received an e-mail from Metromedia Fiber Network Systems ("MFNS") inquiring about the status of their permit request.

B. 12/4/00: I spoke with someone from Level3 (I do not recall the name), who inquired as to the status of their permit request.

C. 12/20/00: I spoke with an attorney for Adelphia Business Solutions, Robert Jystad, who inquired as to the status of the city's ordinances.

D. 1/9/01 and 1/11/01: I spoke with Elizabeth Brown, Esq., who inquired as to the status of the ordinances and application process which would affect permit requests of Qwest Communications and Level 3 Communications.

E. During the communications indicated in the paragraphs above, I conveyed Culver City's expected time frame with regard to our telecommunications ordinances and permit processing. None of the parties indicated above expressed any objection to the proposed time frame.

3. I declare under the penalty of perjury that the foregoing is true and correct.

Dated: February 12, 2001

John E. Nowak

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	File No. 00-253, 254, 255
City Signal Communications, Inc. Petition for	)	
Declaratory Ruling Concerning Use of Rights of Way	)	
for Access to Poles in Cleveland Heights, Wickliffe, and	)	
Pepper Pike, Ohio	)	

AFFIDAVIT OF CHRISTINA R. SANSONE
IN SUPPORT OF REPLY COMMENTS OF THE NATOA RESPONDENTS

February 13, 2001

I, Christina R. Sansone, swear as follows:

1. I am an Assistant City Attorney for the City of Glendale, California and am assigned to handle certain legal duties for the City of Glendale, including performing legal work and providing legal advice in the area of telecommunications.

2. The purpose of this affidavit is to reply to the comments of Metromedia Fiber Network Services, Inc. ("MFNS") with regard to the practices of the City of Glendale to exercise its police powers to protect the public rights-of-way and to protect the City and its citizens from absorbing the cost of administering encroachment permits for telephone corporations.

3. Although Glendale is not a party to the case in chief, it has been unfairly attacked by Metromedia Fiber Network Services ("MFNS") in a one-sided diatribe against Glendale's legitimate rights-of-way occupancy protections. Therefore, we are compelled to set the record straight and respond to MFNS' inaccurate and irrelevant comments even though this case does NOT involve Glendale.

4. Telephone corporations are franchised by the state of California through the California Public Utilities Commission. However, municipalities may exercise their police power to protect the public right-of-way and to charge reasonable fees in furtherance thereof. In Glendale, prior to excavation, telephone corporation applicants are required to obtain a city-wide blanket encroachment permit which includes the execution of a "Telephone Corporation Encroachment Permit Agreement" (the "Agreement"). The Agreement provides for appropriate time, place and manner regulations including but not limited to: a statement and proof that (1) the applicant possesses public utility status as a "telephone corporation" under California's state franchise rules (Cal. Public Utilities Code Section 7901); (2) the applicant is permitted by the California Public Utilities Commission to operate as a telephone corporation and install or otherwise occupy telecommunications facilities in the public right-of-way; (3) the applicant has complied with state environmental law; (4) the applicant guarantees certain protections for the right-of-way such as repairing damage, relocation and abandonment procedures, providing insurance and indemnification protections, compliance with all laws, and reasonable standards for performance of work. Also called for is an annual encroachment permit fee of $1.80 per lineal foot for the duration of the permit. Applicants are required to provide proof of insurance, a detailed site map, a copy of the applicant's' certificate of public convenience and necessity issued by the California Public Utilities Commission, and appropriate environmental documentation. The Agreement is equally required of all telecommunications operators.

5. Glendale's annual encroachment permit fee is based on studies of actual administrative costs the city incurs in monitoring and overseeing such encroachment permits. Such costs include ongoing insurance review, quarterly environmental mitigation monitoring as required by state law, ongoing compliance review, geographic mapping, costs of underground

service markings, administrative costs and overhead, legal support and lost pavement life. Glendale has determined that said annual encroachment fee of $1.80 per lineal foot is the minimum amount necessary to cover Glendale's costs. The Agreement provides that the fee may be adjusted based on increases or decreases in actual costs. In-lieu services, facilities or equipment may also be provided should the parties mutually agree to same in advance.

6. MFNS' charge that Glendale delayed its encroachment permit is wholly unfounded and misrepresents the facts. MFNS first applied for an encroachment permit to construct facilities and structures in Glendale, in approximately May 1999, at which time I sent a copy of the Application and encroachment permit requirements to Frances K. Greenleaf, Esq., then-legal counsel for MFNS. On September 24, 1999, after discussions regarding the annual encroachment permit fee, MFNS agreed to execute the Agreement and began the process of submitting documentation as to its status as a telephone corporation under the California Public Utilities Code. However, MFNS failed to provide environmental documentation to show that it complied with state environmental law. Upon further questioning, MFNS admitted that it had no such documentation.

7. On November 17, 1999, Glendale became aware of a stop work notice issued by the Public Utilities Commission to MFNS on October 21, 1999. That notice stated that MFNS had undertaken construction of a fiber optic network in the San Francisco Bay Area without appropriate authority from the Commission and without appropriate environmental review. The stop work notice arose out of the limitations placed on MFNS by the California Public Utilities Commission which stated that it was not permitted under its certificate of public convenience and necessity to engage in construction (digging, trenching, boring, etc) except to open utility holes and feed fiber through existing in situ conduits. In a meeting with Commission staff, MFNS agreed to voluntarily cease all construction operations with the exception of specified work in the City of San Francisco. As of November 1999, MFNS stopped providing information and documentation for the Glendale encroachment permit. MFNS recently submitted a second application for installation of underground facilities in certain areas of Glendale. This second application is currently under review and there still appears to be a question as to whether MFNS can engage in construction in the street. I have contacted MFNS' legal counsel on the issue but as of this writing, I have had no response.

8. MFNS asserts that it is troubled that it is required to sign "the exact same agreement executed by another CLEC." Glendale does indeed require all new telephone companies who seek entry into the public right-of-way to execute the Agreement under the same terms and conditions so that the City may provide an even playing field for all new entrants to ensure the public rights-of-way are managed on a competitively neutral and nondiscriminatory basis as required by law. MFNS appears to be concerned that other telephone corporations have signed the Agreement and have received encroachment permits while MFNS has yet to be issued one. However, in MFNS' case, because MFNS has not yet provided sufficient information regarding its authority to commence construction and for the reasons stated in paragraphs 7 and 8 above, MFNS' encroachment permit has not yet been issued.