

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

DOCKET FILE COPY ORIGINAL

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. 20036-4321  
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

RECEIVED

FEB 23 2001

FCC MAIL ROOM

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

February 15, 2001

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

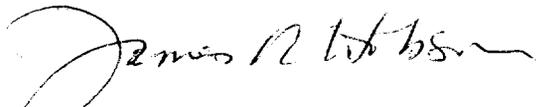
Re: CS Dockets 00-253, 254 and 255  
City Signal Communications Petition for Declaratory Ruling

Dear Madame Secretary:

Yesterday, Wednesday, February 14<sup>th</sup>, Reply Comments of the NATOA Respondents were submitted in the captioned proceeding with facsimile copies of two declarations from Culver City, California. I am enclosing the two signed originals and six copies of each to replace the facsimiles.

Please direct any questions to the undersigned.

Sincerely,

  
James R. Hobson

RECEIVED

FEB 23 2001

FCC MAIL ROOM

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 21. The Pass Through Ordinance is scheduled for Council consideration during the February 26,  
22 2001 meeting. As soon as the Pass Through Ordinance is adopted, Culver City will continue to  
23 process any permit requests received, provided that applications for permits have been submitted.

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

25  
26 <sup>1</sup> The original plans, which were the same ones submitted twice (November 16 and November 17, 2000), proposed a  
27 route down Sawtelle Boulevard. However, the street significantly narrows into a residential neighborhood, and there  
28 is a prohibition against major night time construction. In addition, there is a major CalTrans freeway ramp at that  
29 point, and CalTrans will not permit a major ramp to be shut down for any significant period of time.

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

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

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

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

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

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

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

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

9  
10 I declare under the penalty of perjury that the foregoing is true and correct to the best of  
11 my knowledge.

12 Dated: February 13, 2001



13 Laura D'Auri  
14 Laura D'Auri  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

RECEIVED

FEB 23 2001

Before the FCC MAIL ROOM

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:

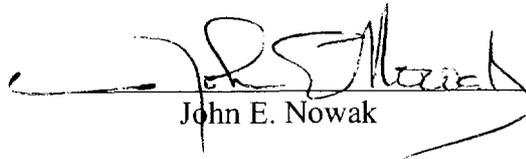
1. I am the Assistant Chief Administrative Officer for the City of Culver City ("Culver City"), and a member of the City's informal Telecommunications Task Force.
2. During the period between October 2000 and January 2001, I personally communicated with the following:
  - A. 10/16/00: I received an e-mail 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 Adelpia Business Solutions, Robert Jystad, who inquired as to the status of the city's ordinances.

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

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

8  
9 3. I declare under the penalty of perjury that the foregoing is true and correct.

10 Dated: February 12, 2001

11  
12   
13 John E. Nowak