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June 1, 2001

VIA ELECTRONIC FILING

Magalie Roman Salas, Esq., Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: **City Signal Communications, Inc.**
Written Ex Parte: CS Docket Nos. 00-253, 00-254 and 00-255

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's Rules, City Signal Communications, Inc. ("City Signal") is submitting this written *ex parte* in response to the May 23, 2001 *ex parte* letter ("Cities' *Ex Parte* Letter") filed on behalf of the cities of Cleveland Heights, Pepper Pike and Wickliffe, Ohio (collectively, the "Cities"). The purpose of this written *ex parte* is to clarify certain statements made in the Cities' *Ex Parte* Letter, which provides the Commission with the Cities' update on the status of City Signal's request for permits to construct and operate its network over the Cities' public rights-of-way.

Generally, the updated information provided in the Cities' *Ex Parte* Letter is correct. City Signal has received its permits for aerial construction from the City of Wickliffe, and, accordingly, City Signal is filing under separate cover a motion to withdraw its Petition in CS Docket No. 00-254. City Signal also is in the process of negotiating arrangements with Pepper Pike and Cleveland Heights to access their public rights-of-way and hopes to reach agreements with those cities in the near future.

For the record, however, City Signal is clarifying certain statements made in the Cities' *Ex Parte* Letter, so there are no misconceptions regarding the Cities' violative conduct under Section 253 that necessitated City Signal's petitions to the Commission. While City Signal is pleased that progress finally is being made toward reaching an agreement on access to the rights-of-way and appreciates the Cities' efforts in this regard, the fact remains that City Signal has been delayed over a year to reach this point with the Cities, and has faced discriminatory terms and conditions that the

Cities have attempted to impose on the Company. In an industry where speed to market is of the essence, new entrants should not be subject to the delay City Signal has experienced in the Cities. Moreover, such delay should not be used to force new entrants to accept unreasonable and discriminatory terms and conditions in order to enter a market. Thus, in considering the Cities' *Ex Parte* Letter, the Commission should be mindful that the Cities' status report does not reflect the pro-competitive policy goals or the requirements of Section 253, which mandate that the Cities treat City Signal in a competitively neutral, nondiscriminatory manner vis-à-vis other carriers, including the incumbent local exchange carrier, and grant, under reasonable terms and conditions and in a timely manner, the right-of-way authority necessary for City Signal to install its network.

In the Cities' *Ex Parte* Letter, Pepper Pike and Cleveland Heights state that City Signal has agreed to utilize underground conduit in those cities. City Signal is negotiating with these cities in an effort to reach an agreement regarding the use of underground conduit. However, City Signal has not yet received from either city the costs associated with the use of their conduit. In addition, it should not be forgotten that underground installation was not City Signal's preference. It is only in the interest of facilitating an already unreasonable lengthy permitting process that City Signal has been willing to concede to the cities' demands to place its facilities underground. To the extent that these cities continue to allow existing telecommunications carriers to build, maintain and upgrade their aerial networks, the cities' refusal to allow City Signal to install its network in the same manner is discriminatory and not competitively neutral.

In the Cities' *Ex Parte* letter, the City of Pepper Pike also states that it received initial bids for construction of the underground conduit that are approximately one-third of the cost cited by City Signal. This claim cannot be substantiated because it is City Signal's understanding that Pepper Pike has only received bids for completion of one-third of the proposed conduit build. Pepper Pike is supposed to receive bids on an additional third of the build in the first week of June. It also is City Signal's understanding that the third segment of the build has not yet been put out for bids. In addition, Pepper Pike has not shared its bid materials with City Signal and it is unclear whether the construction specifications are the same. City Signal's costs were based on its costs for similar underground builds done in Ohio. Regardless of these factors, even if the total cost to the City is one-third of the cost cited by City Signal, it would still cost City Signal more to construct an underground network than an aerial network.¹

As indicated above, City Signal is in the process of negotiating agreements with Cleveland Heights and Pepper Pike. Currently, City Signal is waiting to receive from the cities cost information for the use and construction of the cities' proposed underground conduit. City Signal's agreement to utilize underground conduit will be contingent on the costs charged by the cities for using their conduit, which must be in conformity with Section 253. City Signal is hopeful it will reach an agreement with each of these cities, as indicated in the Cities' *Ex Parte* Letter.

¹ See City Signal's Reply Comments, Affidavit of C. Koslosky at 6 (filed Feb. 15, 2001).

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Nonetheless, City Signal requests that the Commission expeditiously act on its two remaining petitions to provide the guidance necessary to ensure that municipalities operate within the parameters of Section 253. City Signal also requests that the Commission make clear that local regulators cannot abuse their right-of-way authority to impose inordinate delays, or the threat of delay, to extract unreasonable and discriminatory terms and conditions from new entrants. Such actions, which are raised in the petitions, violate Section 253(a), and the Commission should take prompt action to remedy these violations.

Please direct any questions concerning this *ex parte* submission to the undersigned.

Respectfully submitted,

/s/ Kathy L. Cooper

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Kathy L. Cooper

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