

ORIGINAL

COLE, RAYWID & BRAVERMAN, L.L.P.

T. SCOTT THOMPSON  
WRITER'S E-MAIL  
STHOMPSON@CRBLAW.COM

ATTORNEYS AT LAW  
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20006-3458  
TELEPHONE (202) 659-9750  
FAX (202) 452-0067  
WWW.CRBLAW.COM

LOS ANGELES OFFICE  
2381 ROSECRANS AVENUE, SUITE 110  
EL SEGUNDO, CALIFORNIA 90245-4290  
TELEPHONE (310) 643-7999  
FAX (310) 643-7997

EX PARTE OR LATE FILED

January 23, 2002

RECEIVED

JAN 23 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA COURIER

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**Re: Ex Parte Presentation in CC Docket N. 98-146**

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, Adelphia Business Solutions, by counsel, on behalf of itself and the other companies and organizations listed below, submits this notice of *ex parte* presentation in the above-captioned proceeding.

On January 22, 2002, Scott Thompson on behalf of Adelphia Business Solutions; Frank Simone, AT&T; Terry Monroe, CompTel; Theresa Gaugler, ALTS; and Jarvis Bennett, SBC met with Matthew Brill, Common Carrier Legal Advisor to Commissioner Abernathy, to discuss barriers to deployment associated with access to public rights-of-way. At the meeting, the attendees also provided Mr. Brill with the attached document, "Recommended Measures to Promote Public Rights-Of-Way Access."

Respectfully Submitted,



T. Scott Thompson

**Attorney for Adelphia Business Solutions**

cc: Matthew Brill

**RECEIVED**  
JAN 23 2002  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**RECOMMENDED MEASURES**  
**TO PROMOTE PUBLIC RIGHTS-OF-WAY ACCESS**

- Access to public rights-of-way should be extended to all entities providing intrastate, interstate or international telecommunications or telecommunications services or deploying facilities to be used directly or indirectly in the provision of such services ("Providers").
- Government entities should act on a request for public rights-of-way access within a reasonable and fixed period of time from the date that the request for such access is submitted, or such request should be deemed approved.
- Fees charged for public rights-of-way access should reflect only the actual and direct costs incurred in managing the public rights-of-way and the amount of public rights-of-way actually used by the Provider. In-kind contributions for access to public rights-of-way should not be allowed.
- Consistent with the measures described herein and competitive neutrality, all Providers should be treated uniformly with respect to terms and conditions of access to public rights-of-way, including with respect to the application of cost-based fees.
- Entities that do not have physical facilities in, require access to, or actually use the public rights-of-way, such as resellers and lessees of network elements from facilities-based Providers, should not be subject to public rights-of-way management practices or fees.
- Rights-of-way authorizations containing terms, qualification procedures, or other requirements unrelated to the actual management of the public rights-of-way are inappropriate.
- Industry-based criteria should be used to guide the development of any engineering standards involving the placement of Provider facilities and equipment.
- Waivers of the right to challenge the lawfulness of particular governmental requirements as a condition of receiving public rights-of-way access should be invalid. Providers should have the right to bring existing agreements, franchises, and permits into compliance with the law.
- Providers should have a private right of action to challenge public rights-of-way management practices and fees, even to the extent such practices and fees do not rise to the level of prohibiting the Provider from providing service.
- The Commission should vigorously enforce existing law and use expedited procedures for resolving preemption petitions involving access to public rights-of-way.