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revenues could be properly be passed through by cable operators to subscribers. In addition, the FCC found that cable operators could pass through the entire amount of the franchise fee assessed by the local franchising authority at any time regardless of whether the cable operator passed through the entire amount of the franchise fee at the first opportunity, or subsequently opted to do so. Finally, the FCC determined that cable operators were permitted to itemize on a subscriber's monthly bill the full amount assessed by the local franchising authority as a franchise fee, including non-subscriber related revenues.

The decision is currently under appeal in the 5th Circuit Court of Appeals.

**Fiscal/Urban/Rural Impacts:** Cable customers will see substantial increases in their monthly bills, without commensurate service enhancement.

**Adopted by Telecommunications and Technology Steering Committee**  
**Unanimous**  
**March 2, 2002**

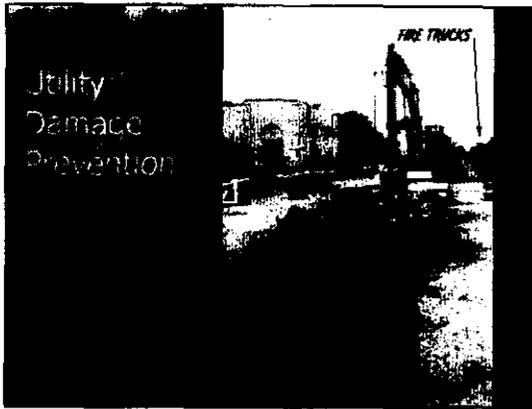
**Adopted by the NACo Board of Directors**  
**March 4, 2002**

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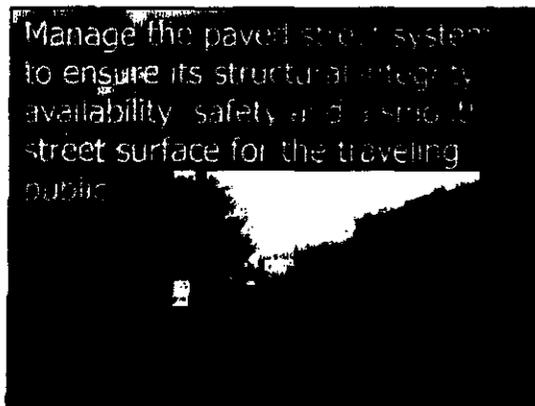
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- Legislative Action Center
- Grassroots Resolutions
- Legislative Bill Files
- Legislative Priorities
- Fact Sheets
- Advocacy Documents
- NACo Lobbyists
- State and County Platforms
- Legislation
- American County Platform & Resolutions

## American County Platform

### 2002 - 2003 Resolutions-- Telecommunications and Technology

#### **Resolution Opposing Pass Through Of Cable Franchise Fees From "Non-Subscriber" Revenue**

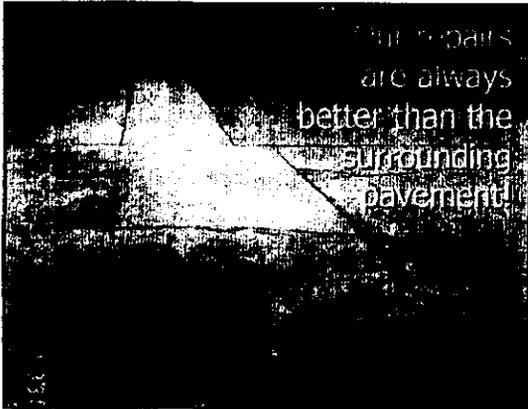
**Issue:** Opposition to pass through to cable customers of franchise fees on "non-subscriber" revenue.

**Adopted Policy:** NACo strongly opposes the pass through to cable customers of "non-subscriber" revenue, such as advertising and other commissions, and opposes the itemization of franchise fees stemming from such actions.

**Background:** Cable television exerts an enormous influence on the lives and culture of many county residents and is becoming an essential source of information. Federal law is clear that counties may, through the franchising process, monitor the performance of cable television operators to ensure that the operators provide quality service and reasonable prices to consumers in all sections of a franchise area. Franchise fees are the rent cable operators pay for the use of public rights of way.

The City of Pasadena, California, and other local governments, filed requests with the Federal Communications Commission (FCC) asking for clarification of whether Federal law authorizes the "pass through" of franchise fees to subscribers on cable television bills based on gross revenues that encompass "non-subscriber" related revenue, specifically income generated by advertising sales and home shopping commissions. Pasadena also questioned certain itemization practices of cable operators stemming from the pass through of such non-subscriber revenue. Cable operators have traditionally passed through to subscribers franchise fees based on a percentage of gross revenues. Where cable rates are subject to rate regulation, this pass through is specifically provided for in the FCC's rate rules. Cable operators, such as Charter Communications, which serves the City of Pasadena, have begun to itemize and pass through to subscribers franchise fees imposed on non-subscriber revenue sources.

The FCC concluded that franchise fees based on non-subscriber



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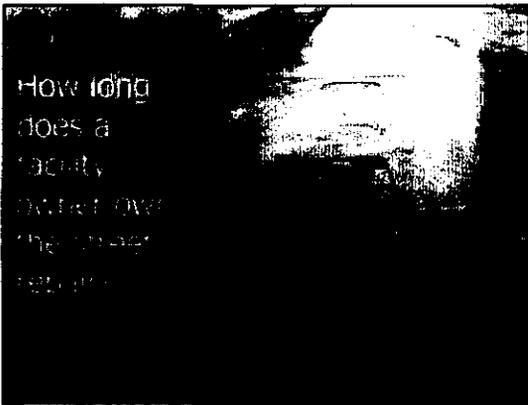
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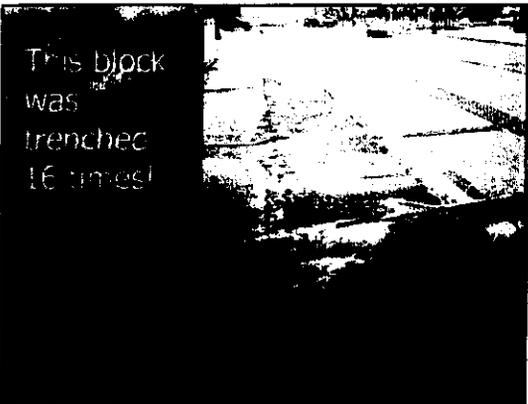
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and most of the City's management requirements, striking some of the provisions. The appeal to the 2nd Circuit was made in the summer of 2001, and oral arguments were in late fall. Recently, the Court sent the following questions (paraphrased) to the FCC:

(1) Under Section 253(d) does the FCC have exclusive, concurrent, or no jurisdiction to enforce against a local government the provisions of Section 253(a)?

(2) Whenever the Commission enforces Section 253(a) against a local government, does it have jurisdiction to adjudicate the local government's section 253(c) defense?

(3) Is five percent "fair and reasonable compensation" and, if not, is the local government limited to cost? If not limited to cost, limited by what criteria?

The answer to these questions could have a significant impact on the court's findings and subsequently on local governments' authority to impose appropriate requirements and fees on telecommunications providers.

**Fiscal/Urban/Rural Impacts:** There could be substantial revenue lost, and significant infrastructure costs for local government, if local governments' regulations are found to be barriers to entry for telecommunications companies.

**Adopted by Telecommunications and Technology Steering Committee**  
**Unanimous**  
**March 2, 2002**

**Adopted by the NACo Board of Directors**  
**March 4, 2002**

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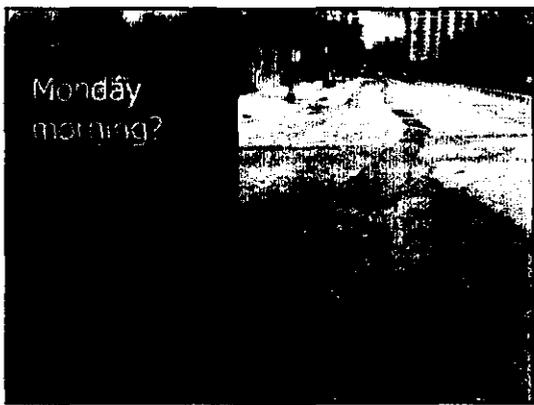
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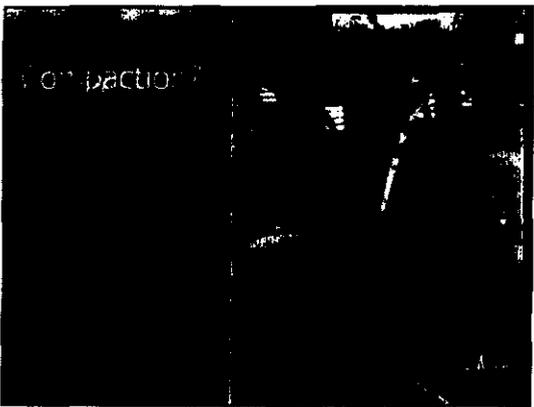
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- Executive Action Center
- Information Resources
- Legislative Bulletins
- Legislative Priorities
- Fact Sheets
- Advocacy Documents
- NACo Lobbyists
- Public Comment
- Education
- American County Platform & Resolutions

## American County Platform

### 2002 - 2003 Resolutions-- Telecommunications and Technology

#### Resolution Supporting Section 253 (C) Of The Telecommunications Act Of 1996

**Issue:** Reaffirming opposition to preemption of local authorities over public rights-of-way

**Adopted Policy:** NACo reaffirms its support of Section 253 (c) of the Telecommunications Act of 1996, which states: "Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."

**Background:** In 1996, Congress crafted legislation that was intended to speed the deployment of a plethora of new telecommunications technologies. They also attempted to remove barriers to the entry of new competitors in the telecommunications market. Section 253 of the Act deals with this situation and states in subsection (a), "IN GENERAL- No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." But the Act goes on to specifically discuss local authorities in subsection (c).

Recently there have been increased attempts by industry representatives and others to undermine this authority with suggestions that local government requirements are negatively affecting the deployment of telecommunications services and that local fees are excessive.

The local authority question is currently being considered in an important White Plains, NY case pending before the US Court of Appeals for the 2nd Circuit. The case is a Section 253 challenge by TCG to the City's right of way management and compensation ordinance. The federal district court upheld the City's 5% franchise fee



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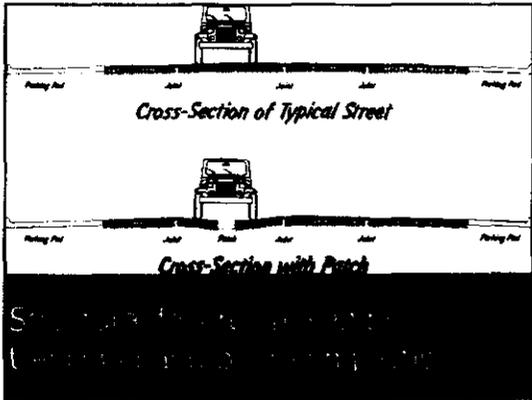
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through federal, state and local collaborative efforts. NACo supports funding of the Federal Geographic Data Committee (FGDC) Community/Federal Initiative Partnership (C/FIP) initiative and NASA Application Commercialization and Education (ACE), and supports congressional funding of NASA efforts to institutionalize policies of making NASA data and technology available to all local governments on an ongoing basis. NACo supports the I-Team Geospatial Information Initiative and urges strong and broad county participation in the I-teams process. NACo also supports the coordinated and collaborative utilization of GIS and remote sensing technologies to support local disaster mitigation. Coordination and cost sharing should be between local, regional, state, tribal, private and federal entities to reduce risk and losses to property and the environment.

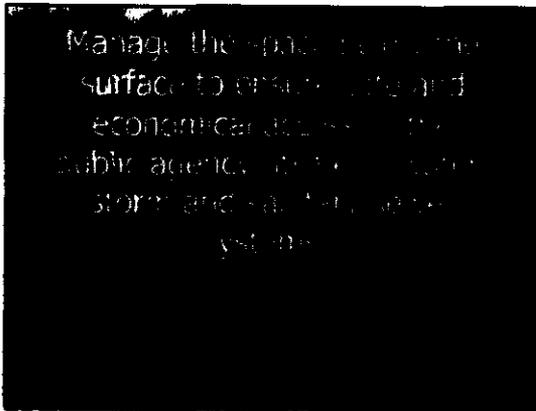
**For additional information about this section contact:  
Jeff Arnold, Deputy Legislative Director**

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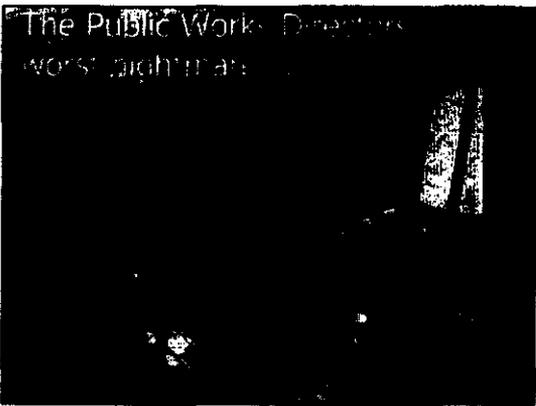
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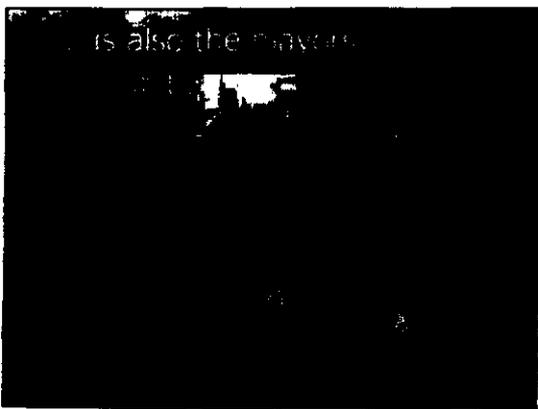
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both "Lifeline" and "Linkup" as tools to implement universal access for low-income and limited access individuals. NACo opposes any federal actions to preempt state universal service programs.

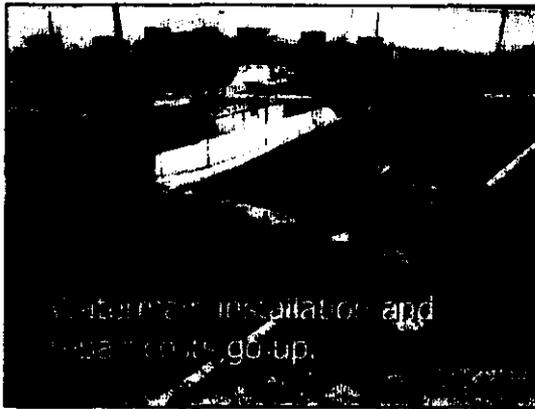
**13. E-rate:** NACo supports the existing "E-rate program to provide affordable access by citizens to the services and information available on the Internet. The E-rate was enacted as part of the Telecommunications Act of 1996 as part of the Universal Service Program (which makes telephone service available and affordable to almost all Americans). The E-rate provides discounts to public and private schools, libraries and consortia on telecommunications services, Internet access and internal networking equipment and facilities.

**14. E-Governance:** Utilization of the information superhighway includes the delivery of a variety of county services for the citizenry through "e-governance" portals. NACo supports legislative and regulatory policies, at every level of government, that facilitate and promote the utilization of e-governance to provide governmental services to citizens.

**15. On-line Privacy:** As counties move to "e-governance", utilizing online resources to provide services to their population, more personal information will be collected, stored and potentially made available to the public through county Internet website portals. Consumers are becoming more aware of the potential uses of personal information for purposes other than those intended, and are becoming more concerned about how counties are going to respond. NACo supports implementation of "Fair Information Practices", a voluntary online privacy standard, as a goals-based effort to forestall federal preemptive action to impose specific privacy requirements on local government.

**16. Taxation:** The Telecommunications Act did not change or impair any state or local government authority to tax telecommunications providers, so long as the tax is imposed in a non-discriminatory manner. If state law permits, local governments may impose taxes on wireless telecommunications providers. NACo encourages federal and state governments to develop policy, which will support telecommunication providers in assisting county governments in developing telecommunications capabilities.

**17. Geographic Information Systems:** Geographic Information Systems (GIS) are critical tools for county officials to make appropriate land use decisions, manage existing infrastructure, and maintain adequate linkages between the county's land base and its government. NACo encourages member counties, other local governments, states, tribal entities and the private sector to engage in a coordinated effort that will lead to standardized best practices and land record modernization as well as a solid digital infrastructure, in particular cadastral data. NACo supports increased funding and resources for the collection and maintenance of cadastral and other framework data



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those rental expenses associated with non-subscriber services.

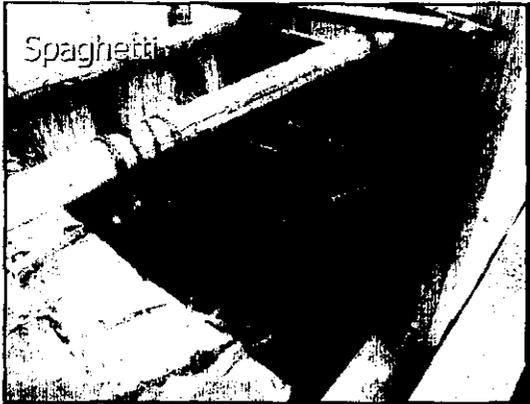
**10. Consumer Protection:** Counties have a major role to play in protecting consumer interests, including a strong consumer protection process. Companies wishing to provide telecommunications or video services, including traditional telephone companies or cable operators, must be subject to safeguards to protect consumers against cross subsidies. NACo believes counties have the right to review mergers and acquisitions when such activity might result in the reduction of competition in the local marketplace. Every effort should be made to promote competition between providers to ensure consumers are receiving services at the lowest possible cost.

**11. The Internet and expansion of advanced telecommunications services:** The Internet is a "network of networks" that links people, institutions, businesses and governments around the world. Many counties maintain web sites to inform their citizens about laws, services and programs. However, the Internet is only useful if people can access it and the value of the Internet is more and more dependent upon the level of bandwidth available to users. Most residential and small business consumers obtain access to the Internet from Internet service providers (ISPs) offering relatively slow-speed access through "dial-up" telephone services.

NACo strongly supports legislation and administrative policies that help counties (1) attract broadband service regardless of population and (2) maintain high quality basic phone service, commonly referred to as Plain Old Telephone Service (POTS). This includes legislation that provides tax credits to telecommunications providers that develop broadband in rural and under-served communities, and provides for broadened eligibility and additional federal agency loan authority or extension of credit to telecommunications providers that deploy broadband in rural communities.

In supporting expanded broadband service, NACo shall maintain a neutral position on the differing technologies and policy initiatives promoted by the various elements of the telecommunications industry that are seeking to obtain a competitive advantage in retaining or expanding market share. NACo should also support Federal legislation and policies and programs that make training and computers available to low-income communities so that their residents can take advantage of broadband service. To encourage access, consumer choice, competition and diversity, NACo believes any customer of a high-speed cable modem service should not be required to purchase Internet access from the cable company, but have access to any ISP of their choice.

**12. Universal Service:** NACo supports the goals of national universal service to assure the affordability of telephone service in parts of the country where it would otherwise be more expensive. NACo supports



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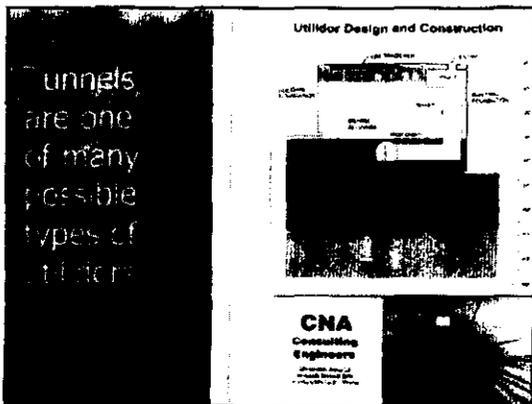
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**9. Cable Television:** Cable television exerts an enormous influence on the lives and culture of many county residents and is becoming an essential source of information. Federal law is clear that counties may, through the franchising process, monitor the performance of cable television operators to ensure that the operators provide quality service to consumers in all sections of a franchise area. The ability of local franchising authorities should be enhanced through action by the Congress and Administration to protect the interest of consumers in quality, yet affordable, cable television services, and to enact laws which encourage greater competition for the cable franchises and in the cable industry, and which encourage the availability of fiber optic cable as rapidly and as widespread as possible, so that rural areas have the same capabilities as urban areas. Cable franchising authorities must continue to have the ability to require through the franchise process the following components:

- explicit approval to transfer a franchise.
- the ability to deny a renewal application for cause, i.e., renewals cannot be considered automatic
- the right to solicit competitive bids from other cable operators.
- immunities from monetary damages when local government actions are consistent with the Cable Act of 1984.
- the ability to terminate a cable operator for cause to ensure that it is not more profitable for an operator to violate a franchise agreement than to follow it.
- the ability to require cable operators to carry all local broadcast signals
- the ability to define reasonable notice to subscribers of rate and service changes;
- the ability to regulate the equipment or any transmission technology such as system capacity, extent of use of fiber optic cable, homes per node, bandwidth for digital carriage, or amplifiers per cascade. While the FCC retains the authority to develop technical standards, Congress retained for local franchise authorities the ability to enforce these standards. Retaining this authority will go a long way to ensure uniform customer service and signal reliability in rural and suburban areas.
- cable operators must lease cable to whomever wants to offer competitive programming.
- all programming which is available on cable must be available to other technologies such as satellite.
- the ability to require PEG (Public, Education, Government) channels as part of the franchise agreement.
- the ability to require universal cable service. This is particularly important to rural and low-income residents who traditionally have been denied service.

Franchise fees are the rent cable operators pay for the use of public rights of way. Operators should not pass through to basic subscribers



to investigate complaints and verify compliance and local taxpayers should not bear the costs of these investigations. NACo believes any disputes between counties and the industry should continue to be resolved in the courts on a case-by-case basis. No Federal actions should undermine local government's zoning authority.

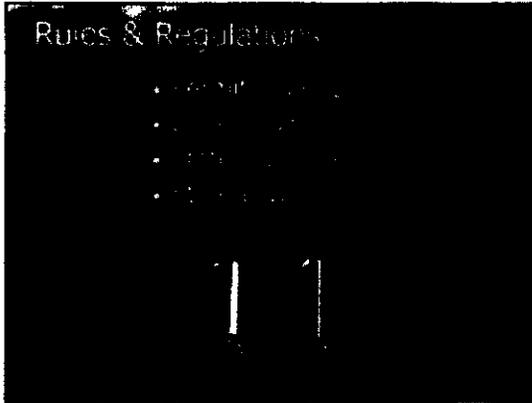
**7. Broadcast Transmission facilities:** There was no intent in the 1997 Telecommunications Act to apply Section 704 to the deployment of broadcast transmission facilities. It is the interest of local governments for broadcasters to convert to digital television, as quickly as possible, in order to free additional spectrum for public safety purposes. Counties have an obligation to their constituents to ensure that, to the extent possible, the public health, safety and welfare are not endangered or otherwise compromised by the construction, modification or installation of broadcast towers. NACo believes nothing should preempt local government authority to reject new tower applications upon finding of adequate existing facilities.

**8. Rights of Way:** Counties own substantial amounts of public rights-of-way, which many telecommunication providers will want to use extensively to construct their own systems in this new era of telecommunications deregulation, and accelerated competition. These are valuable local government real estate assets worth billions of dollars that are held in trust by local governments to benefit the local community.

Federal and state governments must recognize the authority of local governments to protect the public investment, to balance competing demands on this public resource and to require fair and reasonable compensation from telecommunications providers for use of the public rights-of-way on a nondiscriminatory basis. Rights-of-way disputes between telecommunications companies and local governments should be resolved in local jurisdictions.

In order to use the right-of-way a private telecommunications company, including a telephone company, should be required to enter into a franchise agreement with local government which sets the terms and conditions of such use/access. Local governments must be able to require universal services that include nondiscriminatory pricing and equal access to all its citizens as a requirement for granting a franchise.

Because disruption to streets and businesses can have a negative impact on public safety and industry, local governments should have control over allocation of the rights-of-way and be able to ensure that there is neither disruption to other "tenants" or transportation nor any diminution of the useful life of the right-of-way. Local governments must have the right to analyze the legal, financial and technical qualifications of any telecommunications provider wanting to use the public right-of-way and shall have the right not to issue a franchise to an unqualified applicant.



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assist counties in developing the technical competence they need to meet the challenges of the continuing evolution of technology.

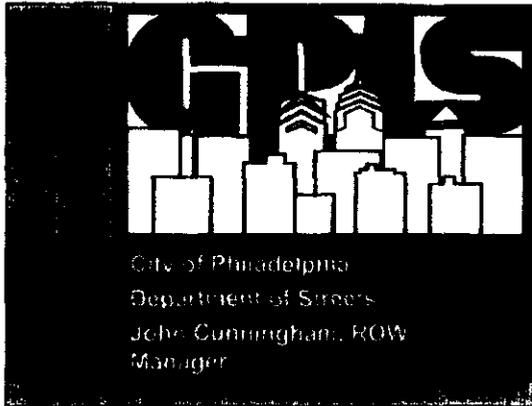
**2. Preemption of local authority:** Counties need to be concerned about retaining authority as trustees of public property and as protectors of public safety and welfare. The 1996 Telecommunications Act, which forms the framework for the nation's telecommunications policy, acknowledges the balance between federal, primarily through the Federal Communications Commission, and state and local authority. NACo opposes any actions that would undermine this shared responsibility and any federal or state preemption of counties' traditional powers in these areas.

**3. Financial assistance for enhanced telecommunications capacity:** Telecommunications play an important role in county government operations and the delivery of services. Counties use advanced telecommunication systems for traffic control and public safety communications purposes. Some counties are developing their own institutional communications networks to link various county departments and agencies. Nothing in federal policy should undermine the ability of counties to develop such infrastructure. NACo believes state and federal governments should provide financial assistance for these initiatives and should encourage efforts to improve coordination across jurisdictions and systems, especially for public safety issues.

**4. Public Safety Frequencies:** Public safety communications is one of the most important elements of county law enforcement and emergency response capabilities. NACo believes that the Federal Communications Commission should assure that public safety frequency bands are not subject to interference from commercial operations on nearby frequencies, and that any future allocation of public safety frequency bands be designed to avoid any such conflicts.

**5. Interoperability:** Communications interoperability between the various local, state and federal agencies on a common public safety channel is critical to coordinate the response to disasters and joint law enforcement efforts. NACo supports efforts to improve interoperability for public safety purposes, and believes the state and federal governments should assist counties with the costs associated with migrating to a viable interoperability standard.

**6. Tower and Antenna Siting:** Counties have a regulatory role regarding the siting of tower and antenna facilities. Section 704 of the 1996 Telecommunications Act details the procedures for shared authority for siting personal wireless facilities. With the exception of decisions based on the health effects of radio frequency (RF) emissions, local authority is preserved with minimal limitations supporting nondiscriminatory, timely action. Even in the case of RF emissions the law clearly requires that the facilities operate in compliance with RF emission standards. Counties must have the ability



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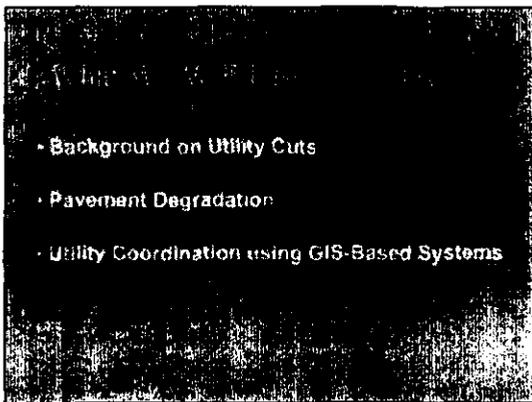
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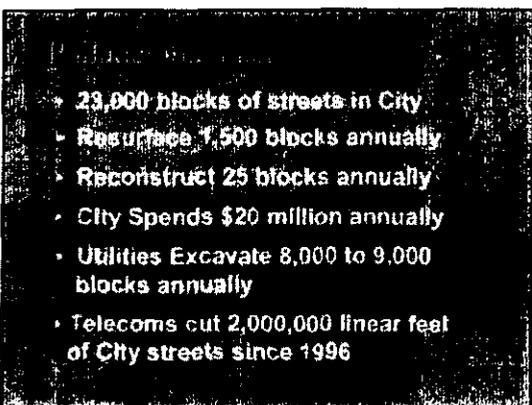
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National Association of Counties

10.1 STATEMENT OF BASIC PHILOSOPHY

- Executive Action Center
- Legislative Resources
- Legislative Briefs
- Legislative Priorities
- Fact Sheets
- Advocacy Documents
- NACo Lobbyists
- State and County Committees
- Calendar
- American County Platform & Resolutions

## American County Platform

### 2001 - 2002 Platform -- Telecommunications and Technology

- Telecommunications and Technology Steering Committee
  - 10.1 Statement of Basic Philosophy
  - 10.2 Policies and Practices

## Telecommunications And Technology Steering Committee

### 10.1 STATEMENT OF BASIC PHILOSOPHY:

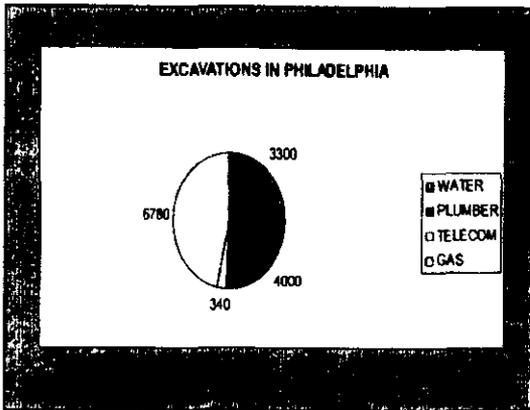
Counties play a major role in the nation's telecommunications system as regulators, service providers, consumers, and protectors of the public's interests. The expanding telecommunications system has also become a critical component of a successful economic development policy, as counties work to attract and retain skilled jobs and industries. County officials will be playing an increasing role in the future of telecommunications policy.

Technology has changed the future of county governance, and the evolving opportunities for counties to utilize technology to provide timely and effective service are immense. Faster computer networks, wireless Internet access, enhanced broadband services, new public safety systems, and technologies yet announced, will make the county of the future more responsive and meaningful to county residents. County officials must be prepared to adapt to this changing environment.

### 10.2 POLICIES AND PRACTICES:

#### 1. Encouraging competition and development of new technologies:

It is in the counties' interest to encourage competition among telecommunications and technology providers and to support the development of new technologies for government and public use. However, many counties may not have the appropriate expertise to monitor the development and implementation of these technologies. Every effort should be made by the state and federal government to




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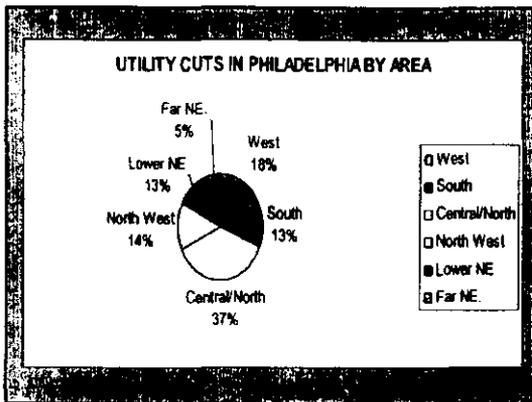
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Dr. Street	From Street	To Street	Total Length (ft)	Number of Cuts	No. Utilities in Utility	No. Utilities to be Cut	No. of Cuts to be Made	No. of Cuts to be Made by Utility Plant	Number of Cuts to be Made by Utility Plant	Number of Cuts to be Made by Utility Plant	Number of Cuts to be Made by Utility Plant	Number of Cuts to be Made by Utility Plant	Number of Cuts to be Made by Utility Plant
11th St	12th St	13th St	100	1	1	1	1	1	1	1	1	1	1
12th St	13th St	14th St	100	1	1	1	1	1	1	1	1	1	1
13th St	14th St	15th St	100	1	1	1	1	1	1	1	1	1	1
14th St	15th St	16th St	100	1	1	1	1	1	1	1	1	1	1
15th St	16th St	17th St	100	1	1	1	1	1	1	1	1	1	1
16th St	17th St	18th St	100	1	1	1	1	1	1	1	1	1	1
17th St	18th St	19th St	100	1	1	1	1	1	1	1	1	1	1
18th St	19th St	20th St	100	1	1	1	1	1	1	1	1	1	1
19th St	20th St	21st St	100	1	1	1	1	1	1	1	1	1	1
20th St	21st St	22nd St	100	1	1	1	1	1	1	1	1	1	1
21st St	22nd St	23rd St	100	1	1	1	1	1	1	1	1	1	1
22nd St	23rd St	24th St	100	1	1	1	1	1	1	1	1	1	1
23rd St	24th St	25th St	100	1	1	1	1	1	1	1	1	1	1
24th St	25th St	26th St	100	1	1	1	1	1	1	1	1	1	1
25th St	26th St	27th St	100	1	1	1	1	1	1	1	1	1	1
26th St	27th St	28th St	100	1	1	1	1	1	1	1	1	1	1
27th St	28th St	29th St	100	1	1	1	1	1	1	1	1	1	1
28th St	29th St	30th St	100	1	1	1	1	1	1	1	1	1	1
29th St	30th St	31st St	100	1	1	1	1	1	1	1	1	1	1
30th St	31st St	32nd St	100	1	1	1	1	1	1	1	1	1	1
31st St	32nd St	33rd St	100	1	1	1	1	1	1	1	1	1	1
32nd St	33rd St	34th St	100	1	1	1	1	1	1	1	1	1	1
33rd St	34th St	35th St	100	1	1	1	1	1	1	1	1	1	1
34th St	35th St	36th St	100	1	1	1	1	1	1	1	1	1	1
35th St	36th St	37th St	100	1	1	1	1	1	1	1	1	1	1
36th St	37th St	38th St	100	1	1	1	1	1	1	1	1	1	1
37th St	38th St	39th St	100	1	1	1	1	1	1	1	1	1	1
38th St	39th St	40th St	100	1	1	1	1	1	1	1	1	1	1
39th St	40th St	41st St	100	1	1	1	1	1	1	1	1	1	1
40th St	41st St	42nd St	100	1	1	1	1	1	1	1	1	1	1
41st St	42nd St	43rd St	100	1	1	1	1	1	1	1	1	1	1
42nd St	43rd St	44th St	100	1	1	1	1	1	1	1	1	1	1
43rd St	44th St	45th St	100	1	1	1	1	1	1	1	1	1	1
44th St	45th St	46th St	100	1	1	1	1	1	1	1	1	1	1
45th St	46th St	47th St	100	1	1	1	1	1	1	1	1	1	1
46th St	47th St	48th St	100	1	1	1	1	1	1	1	1	1	1
47th St	48th St	49th St	100	1	1	1	1	1	1	1	1	1	1
48th St	49th St	50th St	100	1	1	1	1	1	1	1	1	1	1
49th St	50th St	51st St	100	1	1	1	1	1	1	1	1	1	1
50th St	51st St	52nd St	100	1	1	1	1	1	1	1	1	1	1
51st St	52nd St	53rd St	100	1	1	1	1	1	1	1	1	1	1
52nd St	53rd St	54th St	100	1	1	1	1	1	1	1	1	1	1
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55th St	56th St	57th St	100	1	1	1	1	1	1	1	1	1	1
56th St	57th St	58th St	100	1	1	1	1	1	1	1	1	1	1
57th St	58th St	59th St	100	1	1	1	1	1	1	1	1	1	1
58th St	59th St	60th St	100	1	1	1	1	1	1	1	1	1	1
59th St	60th St	61st St	100	1	1	1	1	1	1	1	1	1	1
60th St	61st St	62nd St	100	1	1	1	1	1	1	1	1	1	1
61st St	62nd St	63rd St	100	1	1	1	1	1	1	1	1	1	1
62nd St	63rd St	64th St	100	1	1	1	1	1	1	1	1	1	1
63rd St	64th St	65th St	100	1	1	1	1	1	1	1	1	1	1
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66th St	67th St	68th St	100	1	1	1	1	1	1	1	1	1	1
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69th St	70th St	71st St	100	1	1	1	1	1	1	1	1	1	1
70th St	71st St	72nd St	100	1	1	1	1	1	1	1	1	1	1
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77th St	78th St	79th St	100	1	1	1	1	1	1	1	1	1	1
78th St	79th St	80th St	100	1	1	1	1	1	1	1	1	1	1
79th St	80th St	81st St	100	1	1	1	1	1	1	1	1	1	1
80th St	81st St	82nd St	100	1	1	1	1	1	1	1	1	1	1
81st St	82nd St	83rd St	100	1	1	1	1	1	1	1	1	1	1
82nd St	83rd St	84th St	100	1	1	1	1	1	1	1	1	1	1
83rd St	84th St	85th St	100	1	1	1	1	1	1	1	1	1	1
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90th St	91st St	92nd St	100	1	1	1	1	1	1	1	1	1	1
91st St	92nd St	93rd St	100	1	1	1	1	1	1	1	1	1	1
92nd St	93rd St	94th St	100	1	1	1	1	1	1	1	1	1	1
93rd St	94th St	95th St	100	1	1	1	1	1	1	1	1	1	1
94th St	95th St	96th St	100	1	1	1	1	1	1	1	1	1	1
95th St	96th St	97th St	100	1	1	1	1	1	1	1	1	1	1
96th St	97th St	98th St	100	1	1	1	1	1	1	1	1	1	1
97th St	98th St	99th St	100	1	1	1	1	1	1	1	1	1	1
98th St	99th St	100th St	100	1	1	1	1	1	1	1	1	1	1
99th St	100th St	101st St	100	1	1	1	1	1	1	1	1	1	1
100th St	101st St	102nd St	100	1	1	1	1	1	1	1	1	1	1
101st St	102nd St	103rd St	100	1	1	1	1	1	1	1	1	1	1
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104th St	105th St	106th St	100	1	1	1	1	1	1	1	1	1	1
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106th St	107th St	108th St	100	1	1	1	1	1	1	1	1	1	1
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109th St	110th St	111th St	100	1	1	1	1	1	1	1	1	1	1
110th St	111th St	112th St	100	1	1	1	1	1	1	1	1	1	1
111th St	112th St	113th St	100	1	1	1	1	1	1	1	1	1	1
112th St	113th St	114th St	100	1	1	1	1	1	1	1	1	1	1
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123rd St	124th St	125th St	100	1	1	1	1	1	1	1	1	1	1
124th St	125th St	126th St	100	1	1	1	1	1	1	1	1	1	1

**NACO**



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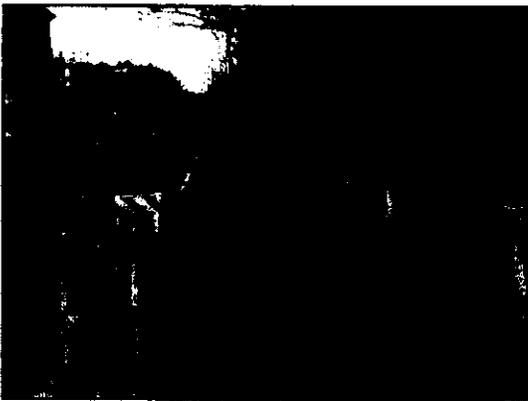
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NLC opposes federal actions that have the direct or indirect effect of preempting legitimate state and local authorities from collecting revenues from wireless services transactions, sales, or other means.

NLC believes in the ability of states and local governments to exercise their legitimate authority to regulate and collect revenue from communications providers, including Internet-active companies, that operate or provide services within their jurisdictions.

c. Federal "Universal Service" Fund:

Any funds or methods used to ensure universal service should be established and administered in consultation with appropriate authorities.

NLC believes the federal government must prohibit those providing basic exchange service from subsidizing other services such as manufacturing, research and development, or information services. New services should not come at the expense of low-cost basic service.

**E. Land Use and Zoning**

1. *General*

The Federal Government must not preempt or restrict zoning and other local laws or requirements applied in a non-discriminatory and timely manner that regulate or restrict the location, placement, size, appearance, screening or siting of transmission and receiving facilities and any other communications facilities such as satellite dishes, radio towers, broadcast facilities, microwave facilities, equipment housing and similar facilities. (See related policy at CED Section 3.02 (D) Local Zoning Authority.)

2. *Adjudication*

NLC believes that disputes over local zoning and land use matters must be adjudicated by the courts and not the FCC.

3. *Exclusive Remedy for Personal Communications Facilities*

Section 704 of the Telecommunications Act of 1996 regarding the location of personal communications facilities, should be amended to express a clear Congressional intent to preclude application of damages and attorney fee remedies against local and state governments under federal civil rights statutes for violations of section 704.

4. *Notice from FCC*

NLC believes that a copy of each application filed with the Federal Communications Commission for construction of broadcast transmission facilities shall be provided concurrently by the applicant to all units of general purpose local government impacted by the proposed facilities, at a minimum all those located within 20 miles of the proposed facility.



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Deflection Tests

- Falling Weight Deflectometer
- Test 50 streets of varying ages

Age	Arterial	Coll.	Res.
0 - 5			
6 - 10			
11-15			
>15			

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televised fixed services licenses, leasing, resale or granting of broadcast spectrum space.

**D. Revenues**

*1. Franchise Fees and Agreements*

a. General:

NLC opposes federal limits on the maximum charges a franchise authority may impose on a service provider through franchise fees. The current ceiling is 5 percent of the gross revenues derived from the operation of the cable system. Given this extraordinary restriction other related financial and in-kind payments, fees and taxes, should be exempt from the 5 percent cap unless they are clearly and unambiguously defined as a franchise fee. Moreover, federal law should be amended to clarify that costs of franchising, transfers, renewals, and related out-of-pocket costs, including consultant and legal costs, are excluded from franchise fee limitations. In addition, payments made for, or in support of the use of PEG facilities, equipment and services, or for institutional networks (I-Nets) should not be considered franchise fees. NLC also believes states should not impose restrictions on franchise fees or their uses.

In addition to owning multi-channel video programming distribution systems, franchising authorities should continue to have the right to own, operate, manage or lease any other voice and data services without a franchise and in competition with franchised providers of such services.

b. Fees for Non-Cable Services:

NLC believes there should be no federal or state limitation on the ability of a franchising authority to impose appropriate franchise fees for the provision of non-cable services or the provision of service by any provider of telecommunications services and its affiliates, or multi-channel video programming distributors using public property or public rights-of-ways. Moreover, franchising authorities should be able to assess a franchise fee on all operations of the franchisee, or any other provider of cable or any other telecommunications system capacity, as any such use constitutes a valuable right for which a city should receive fair compensation.

c. Subscriber Bill Itemization:

NLC opposes federal laws permitting cable operators to itemize franchise fees, PEG access and other franchise costs. Existing laws should be repealed or, at a minimum, amended to permit franchising authorities to require the

complete itemization of all costs, including costs attributable to programming operations and debt service.

NLC believes:

- Franchise fees, PEG access, and other franchise costs that are itemized should be clarified as a charge upon the parent operator's total gross revenues, and not as an additional charge upon subscribers.
- Cable operators should be prohibited from treating such fees or costs as a "pass-through" to subscribers and thus evade payment on 100 percent of their gross revenues.
- Cable operators should be required to quote rates inclusive of such fees and costs in all communications, including advertisements and other promotional materials.
- The franchising authority should be able to require that the itemization of such costs be accurate and appropriate.

d. Multiple Franchises:

NLC believes municipal officials who determine that competition, better service, and lower rates are possible and desirable, should permit multiple franchises and encourage the development of additional viable multi-channel video programming distribution operations in their area.

A franchising authority should also be permitted to consider any issues affecting the local public interest in cable service including but not limited to, the ability and willingness to provide service, PEG access requirements and universal service - in determining whether it is "reasonable" to deny a franchise request. Moreover, a franchising authority should have the right to consider the impact of a franchise decision on competition in the local marketplace, and deny a franchise request if it would inhibit competition.

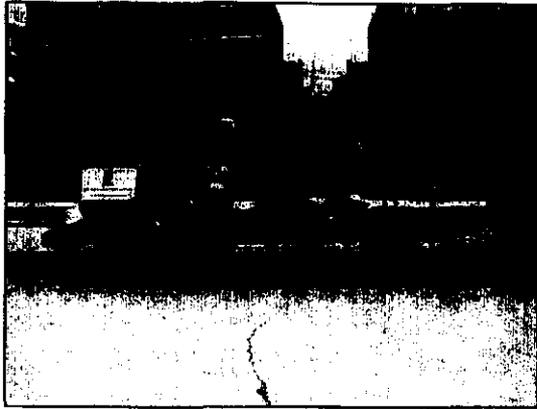
*2. Revenues*

a. General:

Municipalities must have the authority to design fees and receive just and reasonable compensation for the use of public rights-of-ways. In addition, municipalities must have the flexibility to pursue all revenue options.

b. Revenues from Wireless Services:

John Cunningham



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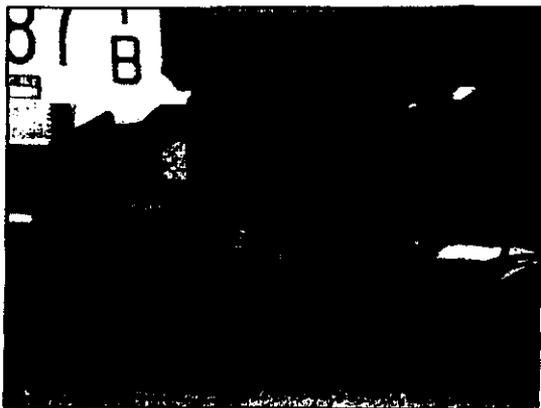
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covering radio and microwave spectrum which are used for communications purposes.

The federal government must allocate sufficient telecommunications spectrum to cities for public safety use in order to enhance inter-operable communications among public safety and service agencies, and to ensure the ability of local governments to meet their responsibilities for public safety and emergency services. The federal government must also involve cities as it develops standards for the delivery of emergency information on cable systems. (See Related Policy at PSCP 6.06 Public Safety Technologies.)

If federal reallocation of radio spectrum forces a municipality to change frequencies, channels, or both to preserve their public safety and emergency communications services, there should be fair compensation made for transfer costs. Such compensation should include all costs reasonably incurred by the municipality, including, but not necessarily limited to new equipment and infrastructure for broadcasting under a different frequency, and additional personnel and training.

b. Spectrum Fees:

NLC believes that the federal government should discontinue its practice of selling the spectrum. The federal government should instead lease or rent the spectrum. This change will allow the federal government to assure users sufficient time to recover investments and at the same time provide the federal government the authority to reallocate this public resource, spectrum, as technologies and public needs evolve.

Localities must not be preempted from collecting revenue from consumers of services provided through use of the spectrum.

Cities do not have the financial resources to compete equally with the private sector for spectrum space, and since local government public safety communications are not revenue producing services, municipalities should be exempt from any fees imposed by the federal government for spectrum, or from any system of auctioning for spectrum space.

NLC opposes the sale of spectrum. Any federal receipts generated by access to spectrum should be set aside in a federal trust fund, with protections equivalent to the highway trust fund. Such funds should be used to finance communications technology with priority given to:

(1.) payment to state and local government agencies to address and correct issues of interference between private spectrum users and public safety communication;

(2.) public safety and domestic security communications;

(3.) creation of a Digital Opportunity Investment trust charged with promoting and investing in educational and civic uses of digital technology.

c. Spectrum Management Issues

The federal government should establish a comprehensive spectrum management master plan that includes input from all stakeholders, including local government, which provides that:

(1.) any non-governmental user of spectrum should have a "use of Lose" condition attached to its allocation which requires the user to return the allocation to the federal government if not put into use within five years.

(2.) the federal government must establish as the highest priority for federal spectrum administration guaranteed "interference-free" interoperable domestic public safety and defense communications.

(3) enforcement to eliminate "interference" is the province of the federal government. The federal government must staff, fund and operate its enforcement and complaint response functions to ensure prompt resolution of reported problems.

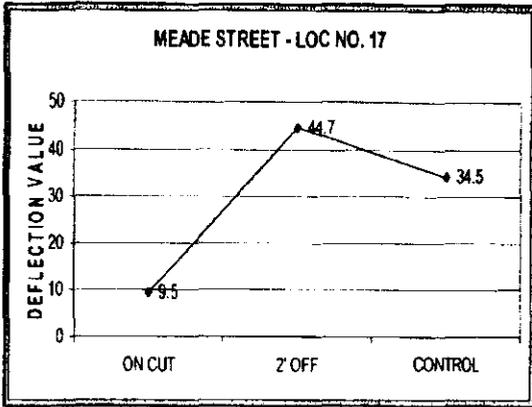
(4) in order to promote the preceding two objectives, the federal government should create a system of joint (collaborative) jurisdiction with state and local governments to enforce non-interference conditions within local jurisdictions.

d. Spectrum Allocation for Low Power Television:

NLC urges the Federal Communications Commission (FCC) to promote universal access by giving priority to municipalities for government access programming on low-power channels and radio bands when opportunities arise to re-allocate and license spectrum space. In addition, the federal government must provide adequate spectrum for translator facilities to promote the availability of "free broadcast" reception wherever feasible.

e. Instructional Televised Fixed Services:

NLC believes the federal government should require the licensee/applicant to provide a commitment of community public service as a prerequisite to any instructional



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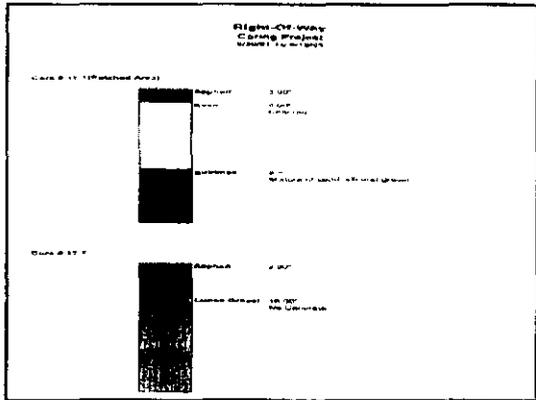
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• Performed Pavement Condition Index

• 400 Sites Tested, Control and Cut Sections

• 20% Cut Section Showed Greater Distress

• Fee Calculated for ROW Ordinance

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(C)(8) Vertical Integration and Concentration of Ownership.)

c. Low Power FM Radio:

NLC encourages the development of low power FM radio broadcasting service to provide opportunities for new entrants, including women and minorities into broadcast ownership. NLC believes that low power FM radio broadcast programming can address local problems, needs and interests.

d. Benefits to Consumers:

Further, NLC believes low-power television can increase audience access to programming in under-served areas, enhance competition, and expand media ownership opportunities for women, minorities, and small businesses.

10. Fairness Doctrine

NLC believes that the federal "fairness doctrine" and related doctrines such as the "equal time" media access requirement for candidates should be enacted into law and strengthened by requiring full and effective FCC enforcement. The "fairness doctrine" was established in 1949 through federal regulation to foster debate on public issues and ensure the public airing of different points of view on controversial issues, but it was revoked in 1987 by the FCC.

11. Equal and Fair Access

a. Consumer Access:

Access to affordable universal basic telecommunications services should be available to all urban, suburban, and rural areas of the United States. Federal, state, and municipal governments, business, and the public should work together to ensure adequate access.

NLC believes federal, state, and municipal telecommunications policies should promote reasonable and affordable access to all public telecommunications networks offered by any provider (e.g., local telephone companies, alternate access carriers, cable communications firms) to assure nondiscriminatory, universal service throughout their authorized service areas. Lifeline service programs should also be established and administered at the state and/or local levels to ensure affordable basic telecommunications services to qualifying low-income consumers. (See related Section 7.0 (C)(1)(d) Rate Structure and Service Options.)

Related, NLC urges the Federal Communications Commission (FCC) to uphold the concept of universal

access by rescinding rules on FM translator services that limit (i) revenue-generation options available to translator stations, and (ii) allowable power output for translators, thereby limiting program choices available to small and rural communities.

b. National Communications Network:

To foster network use and expansion, there should be a national telecommunications network consisting of many service providers competing to provide the best nondiscriminatory service at the lowest reasonable rates to persons or entities seeking services. Moreover, national and international standards and policies for reliability, interconnection and interoperability of such networks are necessary and desirable. Coupled with those reliability, interconnection, and interoperability standards, locally-developed regulations should promote and protect the public health, safety, and interest, especially in connection with the installation and operation of the physical plant of those networks, as well as the installation and operation of subscriber and network terminal equipment physically installed within the local community.

12. Commingling Service

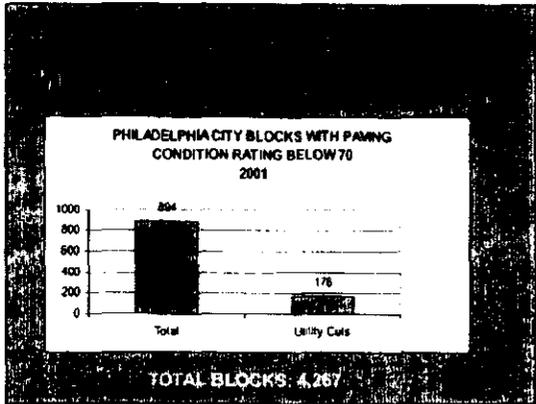
NLC believes that federal, state and local policies should support the stimulation of technological innovation and the development of new services by Bell Operating Companies (BOCs). However, information services should be provided only by a telephone company which provides an integrated communications system, open access to its facilities at nondiscriminatory and tariffed rates, and is barred by regulation from discriminating in favor of its own services.

NLC supports the elimination of telephone equipment manufacturing restrictions on BOCs, and maintains that the federal government should require that a telephone company not engage in anti-competitive discrimination (between itself and another enterprise, or among others) with respect to any product or service related to the provision or use of telecommunications service.

13. Spectrum Frequency Allocation

a. General:

The electronic spectrum is the collective term for the categories of radiation ranging from very low frequency infra-sonics to very high frequency cosmic rays. While the electromagnetic spectrum also encompasses infrared, visible light, ultraviolet, w-rays, and gamma rays the portions of the spectrum primarily regulated by the federal government and the chief focus of this policy are those



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- Lack of Computerized Databases
- No Pavement Management System
- No Digital Permitting System
- Aging Infrastructure

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- Water Dept.
- Gas Company
- Trigen Steam
- Comcast Cable
- PECO Energy
- Verizon
- AT & T
- MCI World Com
- SEPTA
- City Planning
- Street Lighting Division
- Traffic Engineering Division
- Public Property
- XO Communications

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will promote and protect universal access. More broadly, NLC urges the communications industry to develop tangible franchise or related ownership relationships, or otherwise establish genuine business relationships with minority and female-owned businesses. (See related policies at Section 7.0 (B)(4), items (b) and (d), Federal/Local Jurisdiction Over Cable.)

b. Market Share:

NLC also believes the FCC should limit the percent-age of households nationwide served by a multi-channel video programming distributor and its affiliates to not more than 25 percent of the nation's subscribers. NLC holds that the FCC should (i) consider whether to impose limits on the number of subscribers served by a multi-channel video programming provider and its affiliates, (ii) restrict the number of channels on a cable system that can be occupied by programmers affiliated with the cable operator, and (iii) restrict cable operators from entering into exclusive programming contracts and discriminating among programmers.

c. Subsidiary or "Common Carrier":

NLC supports federal law that allows telephone companies, ("telcos") to own and operate cable systems, "open video systems" services, and similar services. This promotes increased competition and facilitates innovation, subject to local cable franchising requirement and appropriate regulatory conditions and safeguards. Through the franchising process, cities must be able to ensure, among other things, that a local exchange carrier providing cable service, or a local exchange carrier that permits others to transmit cable service via its telecommunications facilities or network which crosses the public rights-of-way, is subject to those franchise-related requirements that the franchising authority deems appropriate including, but not limited to: franchise fees; customer service standards; technical standards for signal quality; procedures for reviewing requests for transfers of ownership or control; regulation of rates in areas not subject to "effective competition"; requirements for facilities, equipment and services; requirements for PEG access channel capacity, facilities and support; and universal service.

d. Non-Integrated Ownership:

If the telephone company's cable system is not integrated with its telephone facilities, the system must be franchised and regulated in the traditional manner as a conventional cable system. NLC believes the telephone company should be prohibited from cross-subsidizing its cable services with revenues received from telephone rate-payers and should be required to set up a separate subsidiary for its cable operations and visa versa. There

should be a strict limit on the number of programming services carried on the system in which the telco has a direct or indirect interest. In order to ensure the development of competitive alternatives to the existing cable industry, telephone companies should be prohibited from acquiring existing cable systems, except in exceptional local circumstances subject to franchising authority approval (e.g., where a telco may be the only entity capable of assuming the operation of a poorly performing or abandoned cable system).

e. Integrated Ownership:

With respect to an integrated corporation that provides both cable and telephone services, a cable franchising authority – the city, in most cases – should be authorized through the franchise process to regulate all matters affecting local community needs and interest including, for example, consumer protection; customer service; PEG access; minimum requirements for cable system facilities and equipment; rate regulation in areas not subject to effective competition; nondiscriminatory service throughout a franchise area; and compensation to the franchising authority through payment of a franchise fee.

f. Technology and Service Linkages:

NLC also believes that telephone companies must provide access to unaffiliated information service providers at nondiscriminatory tariff rates, offer switching and related services on a tariff and unbundled basis, be prohibited by regulation from discriminating in favor of its own service offerings, and expand and upgrade its facilities as demand increases. This position preserves, and in no way undermines, the flexibility cities have under federal law to grant reasonable franchise requests and to consider the impact of overbuilds on competition in the delivery of cable television services.

9. *Low Power Television and Low Power FM Radio*

a. Support for Low Power Television (LPTV):

NLC believes that federal LPTV policy must promote and give priority to local government and public service programming, encourage diversity in programming, and maximize opportunity for local competition among LPTV stations.

b. Ownership Opportunities:

NLC also encourages LPTV ownership by women and minorities. Restrictions on trafficking should be established to preserve minority, female, small business, and local ownership. (See related policy at Section 7.00