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MAR 22 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 22, 2002

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue N.E., Suite 110
Washington DC 20002

BY HAND DELIVERY

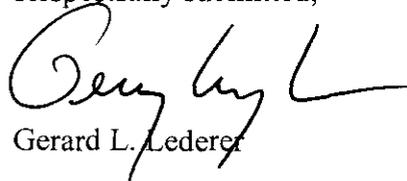
Re: Notice of *Ex Parte* Presentation by the LSGAC in
WT Docket 99-217. *Ex Parte* Notification, GN Docket No. 00-185 / Inquiry
Concerning High-Speed Access to the Internet Over Cable and Other Facilities

Dear Mr. Caton:

On March 21, 2002, the Honorable Marilyn Praisner, Vice Chair of the Federal Communications Commission's Local State Government Advisory Committee lead a primer on rights-of-way management for FCC staff. A list of the presenters, copies of their presentations and other handouts from the program are attached.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,


Gerard L. Lederer

Attachment

Number of Copies received 07/1
FBI/DOE

Providers in the Public Rights-of-Way: A Primer for the FCC Staff Leadership

Presented by

LSGAC

**March 21, 2002
2 - 4 pm**

7th floor, South Conference Room, (7-B516)

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National League of Cities	
National Association of Counties	
NATOA	
APWA	

Providers in the Public Rights-of-Way: A Primer for the FCC Staff Leadership

March 21, 2002

2 - 4pm

7th floor, South Conference Room, (7-B516)

2:00 Overview -- Local Governments Goals for the Program

Honorable Marilyn Praisner
County Councilwoman
Montgomery County, MD
Vice Chair
LSGAC

2:05 Local Governments' Property Interests

This panel will outline the real property nature of local government's rights in the public rights-of-way (PROW), including the value of the property interest; the types of direct, indirect and inchoate burdens that various forms of use place on those property interests. The panel will also address the police power regulations that the various levels of government impose on telecomm providers burdening the rights of way.

Nick Miller, Esq.
Miller & Van Eaton
Washington, D.C.

Merita Hopkins, Esq.
Corporation Counsel
City of Boston
LSGAC Member

2:20 Accommodating Multiple PROW Users at Least-cost to Taxpayers:

Leonard Krumm, P.E. will provide a virtual tour of the occupants that a city must accommodate in its management of the public rights-of-way; geophysical and historical differences between jurisdictions. He will further provide an organization of PROW: the 3 dimensional picture; the limited capacity of both underground and aerial PROW; different requirements of different PROW occupants.

He will also address the impact costs: the direct and indirect cost consequences of different telecomm construction techniques and permanent fixtures on PROW capacity, on PROW accessibility by other users, on depreciable life cycle of PROW capital investments, on third party PROW users and neighbors.

Leonard Krumm, P.E
Senior Consultant

CNA Consulting Engineers
Former Public Works Official in Minneapolis
APWA Leader

2:50 Managing the Pre authorization, Permitting and Construction Process

Mr. Cunningham will share with the FCC his experiences in managing the life cycle of PROW management in the nation's fifth largest city. The program will introduce the professional at the FCC to the:

- PROW planning process—accommodating changing patterns of community growth, economic development, changing utility technologies, and planning for the problems;
- The process of granting an entity a property interest to use PROW; and
- Specific project permitting—new construction of large projects, construction of retrofit projects, and maintenance projects.

John Cunningham,
Right-of-Way Manager
City of Philadelphia
APWA Leader

3:20 Practical Information Requirements and Practical Solutions the PROW Manager Needs

- Information on the operator the City requires before granting the right to use PROW
- Information on the project the City requires for each individual construction project permitted
- Differences between companies that require different information
- Security, Insurance, bonds
- Construction and Personnel qualification specifications
- Project by project permitting vs "blanket" permits
- Remedies for non-compliance
- Lane Closures and traffic control
- Utility location and damage prevention.
- Remedies for damage

John Cunningham
Right-of-Way Manager
City of Philadelphia
APWA Leader

Leonard Krumm, P.E
Senior Consultant
CNA Consulting Engineers
Former Public Works Official in Minneapolis
APWA Leader

3:40 Roundtable on Industry's Complaints & Questions and Answers

- Mayor Ken Fellman -- LSGAC Chair (Arvada, CO)
- Councilwoman Marilyn Praisner -- LSGAC Vice Chair (Montgomery County, MD)
- Councilman Steve Stovall -- LSGAC Member (Plano, Texas)
- Merita Hopkins
- Julie Fleischer, City of Plano Texas
- John Cunningham
- Leonard Krumm
- Elizabeth Beaty, Executive Director, National Association of Telecommunications Officers and Advisors
- Nicholas Miller, Miller & Van Eaton

4:00 Adjourn

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PRESENTATION

**Legal and Regulatory Issues in
PROW Management**

Nicholas P. Miller
March 27, 2002



Local Government Interests

- Property Rights
- Planning and Management of Infrastructure

Property rights in ROW

- PROW is not a "free good"
- Must be allocated for "highest and best use"

What is a Franchise?

- A Grant of a Special Privilege
- A Revocable Personal License to Use (PROW)
- Not a Privilege to Offer a Service
- Avoid Confusion Between These Two

State Property Law Controls

- Same Principles as other Property
- Company Must Acquire a Property Right (Right to "Use") From the Owner of the Property
- "I state in Fee" Lease/Easement/ Franchise or License (Explicit or Implicit) Required
- Fifth Amendment: Federal Law May NOT Preempt State Property Law

If State Law Controls

- State Legislation Controls
- Usual Rule: Cities are Creatures of State and State Can Pull Back
 - property
 - police power authority
- Local Government May Have Independent Right of Ownership

Unfunded Mandates--cost transfers from companies to taxpayers

- accelerated deterioration of infrastructure
- additional costs imposed on other PROW users
 - higher maintenance costs
 - additional level of capital stock
 - higher debt service
- public safety and disaster recovery costs

Local Governments' Response

- Government Property
 - normal state property law controls right to use
 - local governments own or control right to use
 - local governments can set terms and price of use
- Exception
 - prior state grant of property to company
 - recent state preemption of local governments

Companies' Response

- Election: Regulation in the Course of Property Rights
 - Sup. U.S. v. Locals: Retain Authority to Regulate (2-309)
 - Local regulation preempted (253(a))
 - Compensation: limited to impact fees

Federal Law -
47 USC 253(e)(3)(2)(C)(7)

- Right to Charge Rent
- Right to Manage Behavior in ROW
- Right to zone and site antennas and towers

Fundamental PROW Dispute

- is "franchise" a regulatory relationship?
- is property interest?

Case outcomes
determined by this question

Dearborn, Cablevision of Boston: right to occupy PROW is property interest, subject to state property law

Alpharetta, Prince Georges H, Chattanooga: PROW is company's regulatory interest, subject to state and federal regulatory expropriation

Coral Springs: if gov't action prohibits, OK to rely on property interests

CONCLUSION

The authors would like to thank the
Department of Science and Technology
for providing the financial support
for the present work. The authors would
also like to thank the staff of the
Department of Science and Technology
for their cooperation.

Accommodating Multiple
PROW Users at Least-cost to
Tax Payers?

Leonard A. Krumm, P.E.,
CNA Consulting Engineers

Local governments are responsible
for the public infrastructure:

- Streets
- Bridges
- Traffic Signals
- Street Lights
- Water Mains
- Sanitary Sewers
- Storm Drains
- Energy Systems
- District Heating
- Communication Systems



Who else is interested in PROW
management?

- American Public Works Association
- Common Ground Alliance
- American Society of Civil Engineers
- National Utility Locating Contractors Assoc.

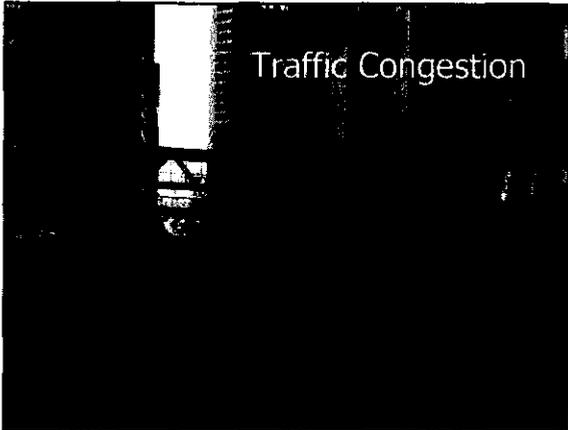
**PUBLIC RIGHT-OF-WAY
MANAGEMENT POLICY**

September 22, 1999
(adopted)

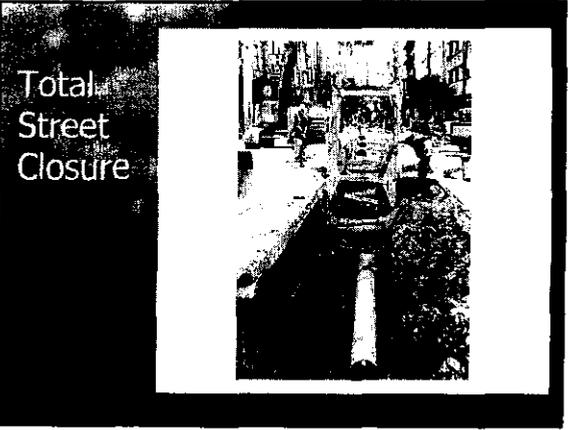
Manage the public rights-of-way on behalf of our citizens for their health, safety and traveling convenience.

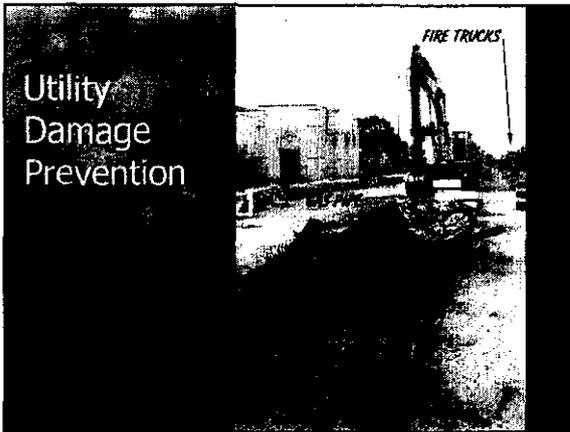
People expect free and easy access to the PROW



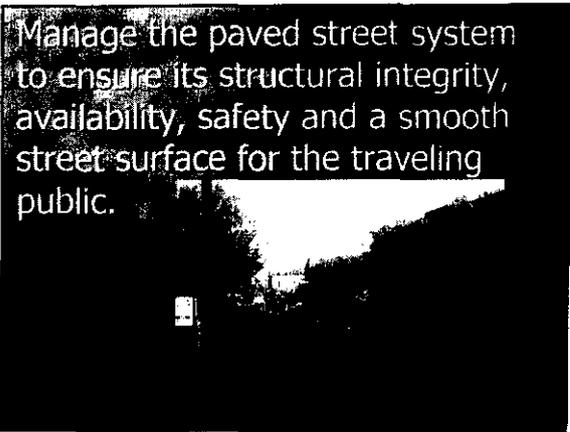






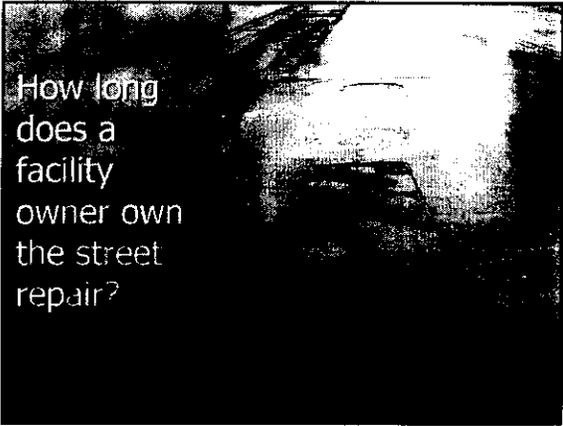








Our repairs
are always
better than the
surrounding
pavement!



How long
does a
facility
owner own
the street
repair?



This block
was
trenched
16 times!



