

**THE UNITED STATES CONFERENCE OF MAYORS  
NATIONAL LEAGUE OF CITIES  
NATIONAL ASSOCIATION OF COUNTIES  
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS  
GOVERNMENT FINANCE OFFICERS ASSOCIATION  
INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION  
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION**

March 11, 2010

The Honorable Mignon Clyburn  
Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**RE: GN Docket No. 09-51; WC Docket No. 09-153**

Commissioner Clyburn:

On behalf of the nation's local elected officials and advisors, we write to you to urge that the Federal Communications Commission (FCC) not take steps that would negatively impact the rights-of-way authority and budgets of our nation's local governments and the citizens they serve. As the FCC prepares to submit its National Broadband Plan to Congress on March 17th, we write to request that the National Broadband Plan neither limit, nor recommend limiting, local government rights-of-way authority or undermine local budgets by imposing a less than fair market value as the standard for fair and reasonable rights-of-way compensation. This would occur if the FCC were to establish, or recommend establishing, a rule or an interpretation that prevents state and local governments from obtaining fair market value for use of rights-of-way by communications companies, makes the current gross revenue-based, per-line or per foot-based, or other market-based rights-of-way fees that many local governments charge unlawful, or requires local rights-of-way fees to be cost-based or subject to any FCC-imposed cost model. Even beyond the March 17<sup>th</sup> National Broadband Plan, we urge you not to establish such a rule or interpretation in a separate proceeding also pending before the FCC involving Level 3's Petition requesting exactly such a rule or interpretation.<sup>1</sup>

In adding Section 253 to the Communications Act in the Telecommunications Act of 1996, Congress made it very clear that Section 253 did not permit the FCC to have a role in defining what was "fair and reasonable" compensation for use of local rights-of-way, and instead left the determination of compensation and management of public property to the states and localities. Congress made it equally clear that courts, not the FCC, should be the arbiters of conflicts between local governments and communications service providers on what constituted "fair and reasonable compensation." Any departure from Congress' clear intent in Section 253 in these difficult economic times would have a severe detrimental impact on local government budgets, leading to layoffs, furloughs, service reductions, and fee increases by local governments – with the citizens of our cities and counties also losing the essential services that their local governments provide. Recent surveys undertaken by several independent associations have shown that the next Fiscal Year looks even worse for states and localities, with more than four in five cities anticipating a budget shortfall. We do not believe that Congress or the Obama Administration intended for the National Broadband Plan to be used as a vehicle to exacerbate the fiscal plight of local governments by taking revenue from city budgets in order to subsidize private communications companies.

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<sup>1</sup> *In the Matter of Level 3 Communications Petition for Declaratory Ruling That Certain Right-of-Way Rents Imposed by the New York State Thruway Authority Are Preempted Under Section 253*, WC Docket No. 09-153.

Local officials have always supported and, in fact, advocated for increased broadband deployment. Local governments' rights-of-way compensation and management practices have not been an impediment to broadband deployment. On the contrary, broadband deployment tends to be greatest in those communities where the communications industry complains the most about such practices. We are well aware of the role that broadband can play in enhancing educational opportunities, promoting economic development, improving health care delivery, assisting in achieving energy efficiency goals, and quite simply, determining if our cities can compete in the world economy. We also know that our rights-of-way management has served to promote, not retard, universal access to broadband services, while at the same time, protecting public health and safety, and keeping rights-of-way accessible for safe transportation.

Collectively, we represent the interests of almost every municipality or county government in the United States. We urge the Commission not to include recommendations in the National Broadband Plan, or take any action in the pending *Level 3* proceeding, that would in any way preempt local government rights-of-way authority or otherwise undermine state and local budgets.

Sincerely



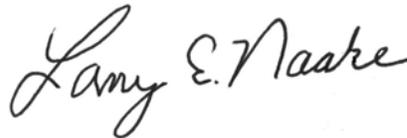
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Officers and Advisors



Tom Cochran  
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The United States Conference of Mayors



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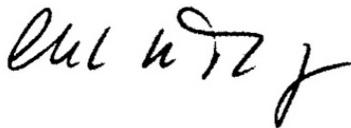
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Cc: Angela Kronenberg, Legal Advisor, Wireline, Office of Commissioner Mignon Clyburn

Marlene Dortch, Secretary, Federal Communications Commission