



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Acceleration of Broadband Deployment:) WC Docket No. 11-59
Expanding the Reach of Reducing the Cost of)
Broadband Deployment by Improving Policies)
Regarding Public Rights of Way and Wireless)
Facilities Siting)

NOTICE OF INQUIRY

Adopted: April 7, 2011

Released: April 7, 2011

Comments of the Pennsylvania State Association of Township Supervisors

The following comments are respectfully submitted by the Pennsylvania State Association of Township Supervisors (PSATS), 4855 Woodland Drive, Enola, PA 17025, in response to the above captioned Notice of Inquiry.

PSATS is a statutorily created, non profit organization composed of townships of the second class, a form of municipal government in Pennsylvania. PSATS' purpose is to represent, improve, and strengthen township government throughout the Commonwealth. Of Pennsylvania's 1455 townships nearly all are active members of PSATS. PSATS member townships comprise approximately 95% of the Commonwealth's land area and are home to about 6,000,000 of its residents. Pennsylvania townships are creatures of statute; that is, their existence, scope of authority, and means of operation are all governed by the state legislature through controlling statutes such as the Second Class Township Code, the Municipalities Planning Code, the Highway Code, and others. These statutes super-impose a framework of uniformity, definition of authority, and limitation upon the procedural and substantive activities of the individual township governments.

Within the statutory framework created and overseen by the legislature, and in pursuit of the public health, safety and welfare, township governments are delegated defined responsibilities to maintain and manage public roadways and to regulate land uses within their respective jurisdictions. Thus the permitting of entry and use of public rights of way and the siting of wireless facilities are subject to approval by township government, within the substantive and procedural parameters set by the state legislature.

Our essential comment on behalf of PSATS' member local governments in response to the Commission's Notice of Inquiry is that the existing role of township government in the permitting and siting process should be preserved and, through education, enhanced as a valuable component of a rational development of broadband and related facilities; and, as a means of protecting the legitimate, non-broadband related interests of residents who are affected by broadband's use of land and rights of way. The deployment

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services, while critically important to the public interest, is also a single, relatively narrow, interest which is fueled by the private, for profit interests of the telecommunication industry's entrepreneurs. The activities of these entrepreneurs will not always coincide with the best interests of the residents of areas in which these businessmen operate simply because their respective goals and motivations do not coincide. The need for effective regulation of the industry's activities is demonstrated on a global scale by the governance provided by your Commission. Our sole point is that local government plays a limited but also essential role in melding the industry's private interests with those of the public. It is right that our shared interest in broadband development be balanced with and, in appropriate circumstances, counterbalanced by other legitimate public interests (e.g., safe streets and plan-conforming land uses) that may be affected by that development. Two means by which these 'other public interests' are protected are by local governments' limited control, exerted through the permitting of rights of way use and the siting of telecommunication facilities in reasonable conformity with the community's land use plan.

It is important to note that these local powers are not by any means autocratic or haphazard. On the contrary, they are closely defined by over-arching state and federal law. Townships' powers in this area are neither theoretically nor practically tools for blocking the progress of the enterprises which are subject to them. They do not enable Draconian requirements or eccentric governmental schemes. On the contrary, local powers are limited and closely overseen by both the legislature and the courts. They are, of course, susceptible to error, but only to same extent that every governmental mechanism is susceptible; and, when errors do occur, remedies are readily accessible to the aggrieved party.

We urge upon the Commission the notion that, within their relatively limited scope of authority, township governments supply a needed, valuable element in the good governance of this subject matter because they supply local knowledge and recognition of legitimate local concerns which are outside the purview of this Commission or any other relevant government agency. If this Commission were to attempt to diminish local powers, such action would inevitably choke out and silence those local interests. Local government offers no unreasonable impediment to the development of broadband; but, on the contrary, supplies a proportionate and valuable element to its rational expansion. Accordingly, the Commission should avoid any action that would diminish the present modest degree of control that communities and their governments now have over the industry's use of the communities' land and rights of way. Conversely, in pursuit of good and efficient government administration and efficient, orderly broadband development, the Commission should, through education and enhanced communication with local governments, augment the abilities of local officials to pursue the best possible outcomes for all interests concerned.

The following paragraphs briefly address the items enumerated in paragraph # 12 of the Commission's NOI:

1. Timeliness and ease of the permitting process. We know of no instance where broadband expansion has been impeded by the permitting process. In addition to the strictures of the Telecommunications Act, Pennsylvania's townships are required by state law to act upon right of way and siting applications within specified time periods.

2. The reasonableness of charges. It is long established law in Pennsylvania that fees for governmental services must bear a reasonable relationship to the actual cost of supplying the particular service. Such fees may not be employed as a tax-like revenue source or enforcement mechanism.
3. The extent to which township ordinances have been updated to reflect current telecommunication technologies or innovative deployment practices. PSATS freely acknowledges that wide disparities exist among township governments with respect to current technologies and related best governmental practices. We would encourage and support comprehensive educational programs aimed at improving local officials' knowledge of this subject matter.
4. Consistent or discriminatory treatment. The law contains a clear and strong prohibition against discriminatory practices by local governments and affords effective remedies for violations. In the experience of this Association, discrimination has not been a complaint suffered or suggested by the telecommunication industry in its dealings with Pennsylvania townships.
5. Presence or absence of uniformity due to varying practices in different jurisdictions. Among Pennsylvania townships, variation in siting and permitting practices is often justified by the varying conditions in the respective townships; but, such variations are also sometimes attributable to uneven levels of knowledge among elected public officials. This is an area that would bear improvement through greater education and communication flowing from the Commission to local governments.
6. Other rights of way concerns. PSATS offers no comment to this item.

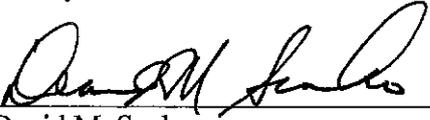
PSATS respectfully suggests that Pennsylvania townships' exercise of siting and permitting powers serves worthwhile public purposes which would otherwise go unmet. They protect the safety of the streets and preserve the integrity of rationally adopted, long-standing land use plans. Additionally, townships' standing as permitting authorities incentivizes entrepreneurs to provide community services, such as PEG channels and service to sparsely populated areas, which might otherwise be passed over as being not optimally profitable. Further, we suggest that the caricature of local government as an impediment to broadband expansion is a red herring raised by entrepreneurs who, in fact, are merely seeking a competitive advantage over others in the same business. The legislative events of 2006 afford an illustrative example. In that year Verizon pressed the Pennsylvania legislature for a law that would 'streamline' broadband expansion and eliminate most of local governments' powers. The effort was opposed, not only by local government, but also by Verizon's competitor, Comcast. Attached to these comments, as an exhibit, is a letter distributed widely by Comcast to local governments concerning the legislation and, what was thought to be, its temporary rejection. Verizon's bill failed largely because the legislative term expired. But the company never had the bill reintroduced in the next legislative term. Why? No observable fact or factor had changed from one legislative term to the next. The only thing that changed was Verizon's internal business plan. The company, in its sole discretion, and for its own reasons, determined that the regulatory environment it had deemed intolerable

some months before, was now compatible with its business plan. No comparable legislation has been proposed from 2006 to the present day. In short, Verizon's expansion plans were governed, not by the decisional powers of local government, but by other business considerations known only to itself.

For all of the above reasons, PSATS urges your Commission to refrain from any measures aimed at diminishing local governments' siting and permitting authority. By the same token PSATS would encourage development of educational and guidance measures as alluded to in paragraphs 37, 38, 39, 41, 42, 43 and 46 of the Commission's Notice of Inquiry.

Thank you for your consideration of PSATS' comments on behalf of Pennsylvania townships.

Pennsylvania State Association of Township Supervisors

By: 

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