Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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

COMMENTS OF THE TOWNSHIP OF ROSS, PENNSYLVANIA

I. INTRODUCTION

The Township of Ross, located in Allegheny County, Pennsylvania, files these comments in response to the Notice of Inquiry ("Notice") in the above captioned proceeding. As requested in the Notice, these comments include a description of the Township's policies and procedures related to broadband access to the public rights-of-way ("ROW's"). They also include a description of the Township's authority under Pennsylvania law for adopting and implementing its ROW policies and procedures. Finally, the comments respond to the Commission's questions regarding possible actions it should take or not take with respect to ROW management practices. These comments do not address wireless facilities siting issues, except as they relate to wireless facilities in the ROW's.

The Township strongly supports the Commission's policy objective of expanding broadband deployment throughout the nation. We also share the Commission's view that ROW access by broadband providers must be on fair and reasonable terms through a predictable and timely process. The record below demonstrates that the Township's ROW policies and procedures place minimal cost and require minimal effort by broadband providers, are fully transparent and result in prompt disposition of permit applications. In short, the Township is not an obstacle to broadband access to the ROW's. The Township strongly opposes, therefore, any effort on the part of the Commission to adopt guidelines or promulgate rules that address municipal ROW practices or fees. Any such attempt would amount to a solution in search of a problem.

In addition, the Township's ROW management practices reflect multiple underlying policy interests of the Township. Whether those interests are public safety, physical maintenance of the streets and roads, protection of the Township's own facilities in the ROW's or control of traffic disruption, the Township must balance these interests with the interests of private occupants of the ROW's. This balancing of interests reflects the individual and unique conditions of our roads and our local community. A "one size fits all" regulatory regime imposed on a national scale would undermine these local interests, would be harmful to

broadband deployment and simply would not work as applied to thousands of diverse communities throughout the nation.

II. MUNICIPAL RIGHT-OF-WAY POLICIES

A. Timeliness and Ease of Permitting Process

A broadband provider that wishes to install aerial wires and/or other equipment in the ROW's is required to obtain a ROW permit. Information to be provided in the ROW permit application includes, but is not limited to, a brief description of the services to be offered in or through the Township of Ross, information regarding the equipment to be placed in the ROW, and whether such equipment will have a detrimental effect on public safety as it relates to the ROW.

The prescribed timeframe for the process is 45 days noting that if the Township fails to grant or reject such ROW permit application within 45 days, the application is deemed approved. Notwithstanding the foregoing, the Township typically has made decisions on applications within 7 days of receipt of the requested information. All ROW permits are issued for a period of 1 year though the permits may be renewed prior to expiration.

If the broadband provider's request requires construction in the ROW, the broadband provider also must obtain a construction permit subject to the same timeline and related terms and conditions as the aforementioned ROW permit such as the type of construction activity, the equipment proposed to be installed or erected, the specific locations of the construction activity and the scheduled beginning and ending dates of all planned construction. In addition, the Township may impose a reasonable amount for posting of a performance bond based on the costs of the equipment to be installed in the ROW and the extent of disturbance of the ROW.

To date, the Township has not experienced any delays in processing such requests. Nor has the Township received any complaints from any company - broadband or otherwise - regarding accessing and/or remaining in the ROW's.

B. Reasonableness of Charges

While the Township Code calls for separate application fees for ROW and construction permits, the Township currently is not imposing such application fees on applicants. In addition, there is a $1,000 up-front street excavation deposit required and which is returned upon satisfactory completion of the work. The excavation fees are $40 for each permit along with per lineal foot inspection fees of $.50 and $2.00 for ROW excavation and street excavation. And lastly, there are varying per square yardage degradation fees for street excavation which vary based on the type of foundation and surface along with the related timeframe in years with such fees ranging from $20.00 for less than 1 year old to $0.00 for greater than 5 years old.

Should the applicant apply for a construction permit concurrently with the ROW permit, the initial application fee set forth above applies to both permits. Other than the possibility of extraordinary or unusual expenses incurred by the Township as a result of the permit holder's

use of the ROW -- in which case the Township may seek reimbursement from the permit holder -- there are no other fees or assessments for broadband providers.

All fees are listed in the Township's Code which may be obtained from the Township's Building Department as well as on the Township's website. The fees, which were last updated in 2009, are intended solely to cover the actual cost of the Township in performing the requisite actions as applicable.

C. Non-Discriminatory Treatment

The Township does not discriminate between or among broadband providers with respect to access to the ROW's. All providers are treated the same consistent with the processes and fees described above.

D. Policy Goals and Any Industry Complaints

The Township has several policy goals underlying its ROW practices and fees. The first and foremost goal is public safety. It is critical that the wires, pipes, poles, pedestals, antennae and other equipment in the ROW's are installed and maintained in a safe and secure manner. The presence of potentially hazardous electrical lines overhead and gas lines underground makes it incumbent upon the Township to insist that these and other equipment are safely constructed and properly maintained.

Second, the Township has a strong interest in maintaining its streets and roads in good condition. The public ROW's are one of the most important assets of any municipality and must be repaired, maintained and reconstructed on a regular basis. Third, the Township has an obligation to protect and maintain its own facilities in the ROW's. These include, but are not limited to, traffic signals, water and sewer facilities, storm drainage basins, etc. These facilities must reside in close proximity with the equipment and facilities of all the other occupants of the ROW's. Finally, is important that vehicular traffic disruption be safely controlled during installation or maintenance of communications facilities.

The ROW procedures and fees outlined above are reasonable and pose no obstacle to broadband providers. This is not only illustrated by the description of the Township's ROW management practices described above, but also by the fact that there have been no known complaints by broadband providers regarding the Township's procedures or fees.

III. MUNICIPAL RIGHT-OF-WAY AUTHORITY IN PENNSYLVANIA

Under Pennsylvania law, the Township of Ross is classified as a Township of the First Class, and as such is governed by the First Class Township Code (53 P.S. § 55101 *et. seq.*). Townships of the First Class must have population densities of 300 inhabitants per square mile and are generally regarded as the "urban ring" around Pennsylvania cities.

Pennsylvania statutes, in general, and the First Class Township Code more specifically, provide the Township with substantial and broad regulatory authority over its ROW's. They

require that the Township approach its ROW management in a competitively neutral and non-discriminatory manner. There are two main statutes from which the Township derives much of its authority over the ROW's as a result of its First Class Township status. First, the Township has broad police powers that allow it:

> To make and adopt all such ordinances, by-laws, rules and regulations not inconsistent with or restrained by the Constitution and the laws of this Commonwealth as may be deemed expedient or necessary for the proper management, care and control of the township and its finances, and the maintenance of peace, good government and welfare of the township and its trade, commerce and manufactures. 53 P.S. §56552

ROW management falls within these broad police powers. More specifically, within the corporate powers granted to First Class Townships, ROW authority is clearly delineated. This ROW authority includes the general authority to regulate streets and specific authority with respect to public utilities. The Township has the power "to regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts and drains, and the heights, grades, widths, slopes and construction thereof, and to grant rights therein for the installation of public utilities in said streets." 53 P.S. §56557

Additionally, embedded within the First Class Township Code are numerous other provisions that address the Township's responsibilities over its streets and roads. They range from statutes addressing the "power to lay out, open, widen, vacate, et cetera" (53 P.S. §57005) to "opening and repairing streets" (53 P.S. §57013) to "repair of sidewalks" (53 P.S. §57304). Collectively, these statutes underscore the authority that the Commonwealth of Pennsylvania places in First Class Townships to regulate and maintain its ROW's in an appropriate and safe manner.

In addition to the powers that the Township derives from the First Class Township Code, it also has specific statutory powers with respect to public utilities which are applicable to all municipalities throughout Pennsylvania. Section 1991 of the Municipal Code, entitled "Use of Streets by Public Utilities" provides in pertinent part:

> The proper corporate authorities of such municipality shall have the right to issue permits determining the manner in which public service corporations...shall place, on or under or over such municipal streets or alleys...pipes, conduits, telegraph lines, or other devices used in furtherance of business; and nothing herein contained should be construed to in any way affect or impair the rights, powers, and privileges of the municipality in, on, under, over or through public streets or alleys of such municipalities, except as herein provided.

53 P.S. §1991. The operative part of this section is that municipalities have the legal right to issue permits to public utilities.

A similar right for all Pennsylvania municipalities with respect to public utilities is found in the Pennsylvania Business Corporation Law. Section 1511, entitled "Additional Powers of Certain Public Utility Corporations," primarily provides public utilities with the right to condemn property for utility-related purposes. Subsection (e) of the section, however, outlines the rights of utilities to use the streets and the parallel rights of municipalities to regulate that use. It states, in pertinent part, that "[b]efore entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof." 15 Pa. C. S. §1511(e).

In sum, the Township has well established legal authority over the streets and roads within its jurisdictional boundaries. This includes its general police powers to adopt ordinances for the management of the Township and for the safety and welfare of its residents. It also provides the authority to regulate all activity within its ROW's, which includes the authority to require permits and to assess fees. This authority applies to all occupants of the ROW's, including broadband providers.

IV. THE COMMISSION SHOULD NOT REGULATE LOCAL RIGHT-OF-WAY MANAGEMENT

A. Introduction

The Township of Ross supports the Commission's policy objective of expanding broadband deployment throughout the nation and throughout our Township. We agree that broadband technology and services promote economic development and vastly improve education, healthcare and other critical services. In addition, broadband competition has the potential to lower rates and improve customer service for our residents. For that reason, we have encouraged and welcomed broadband deployment and competition in our community.

The Township also shares the Commission's view, as expressed in Paragraph 4 of the Notice, that access by broadband providers to the ROW's must be on fair and reasonable terms through a predictable and timely process. For that reason, the Township has developed a regulatory structure, as described above, that places minimal cost and requires minimal effort by broadband providers, that is fully transparent and that results in prompt disposition of applications. The Township has developed an expertise in managing broadband providers, along with other occupants of the ROW's, in a manner that reflects the particular, local conditions of our community.

The Township strongly opposes, therefore, any effort on the part of the Commission to adopt policy guidelines or rules that address municipal ROW practices or fees. There is no evidence whatsoever that the Township's ROW policies or practices discourage broadband deployment. On the contrary, the Township's policies encourage broadband deployment. This is not only illustrated by the Township's ROW management practices, as described in Section II above, but also by the fact that there have been no known complaints by broadband providers regarding these practices. If there was a problem, the providers no doubt would have brought it to the attention of the Township. This has not occurred.

The purpose of the Notice is to explore "specific steps that could be taken to identify and reduce unnecessary obstacles to obtaining access to rights-of-way..." (NOI ¶10). Based on the Township's ROW practices with respect to broadband providers and its legal authority for managing the ROW's described in Section III above, the Township poses no obstacle to broadband deployment. We urge the Commission, therefore, not to attempt to regulate, through new rules, guidelines or other mandatory mechanisms, local management of the ROW's.

B. Right-of-Way Procedures and Fees

The Notice asks for a detailed description of the Township's broadband policies and procedures with respect to the ROW's. Section II above demonstrates that the Township's ROW regulations are neither complicated nor obtuse. They are straightforward and easily accessible. The information requested from broadband providers relates only to the company's physical use of the ROW's. There is no discriminatory treatment among broadband providers—either wired or wireless. In addition, ROW permit applications are processed in a timely fashion and permits are issued promptly.

The fees charged by the Township for ROW permits are fair and reasonable. The Township is aware that municipalities throughout the country typically elect one of two methods for determining ROW management fees—the "value method" or the "cost method." By "value method" we mean the market value of the ROW as customarily assessed as a percentage of the provider's gross revenues. This is the statutorily permitted method, of course, for determining franchise fees from cable operators for use of the ROW's. *See* 47 U.S.C. § 542. This is also a legitimate method for municipalities to employ with respect to broadband providers and most closely approximates the actual value of the property that the municipality holds as a public trust.

The "cost method", on the other hand, is based on the municipality's actual costs in managing the ROW's. These costs necessarily include the Township's direct operating costs (including, but not limited to, personnel time in permitting and inspections), indirect operating costs (including, but not limited to, support functions for ROW management), capital costs (including, but not limited to, equipment, computer hardware and software) street degradation costs (the reduction in street life due to excavations), etc. The Township's current ROW-related fees are significantly lower than the fees that would be assessed by both the "value method" and the "cost method."

C. Policy Goals and the Need for Local Control

The policies underlying the Township's ROW practices are myriad and reflect the multiple public policy interests of the municipality. These interests must be balanced with the interests of the private occupants of the ROW's to achieve an effective regulatory structure. The first and foremost goal is public safety. It is critical that the wires, pipes, poles, pedestals and other equipment in the ROW's are installed and maintained in a safe manner. By way of example, there have been at least two recent incidents in Pennsylvania in which communications company contractors pierced gas lines in the ROW that resulted in personal injury and destruction of property. This occurred in Hempfield Township in Westmoreland County on March 22, 2000 and in Moon Township in Allegheny County on March 16, 2005.

Second, the Township has a strong interest in maintaining its streets and roads in good condition. The public ROW's are one of the most important assets of any municipality and must be properly maintained. The streets and roads of different municipalities are completely different from each other, depending on such factors as terrain, the time period in which they were constructed, whether they have sidewalks, the density of the residential or commercial corridor, etc. For municipalities in the Northeast/Midwest, ROW maintenance can be especially challenging during harsh winters.

Third, the Township has an obligation to protect and maintain its own facilities in the ROW's. These include, but are not limited to, traffic signals, water and sewer facilities, storm drainage basins, etc. These facilities must reside in close proximity with the equipment and facilities of the other occupants of the ROW's. Finally, is important that vehicular traffic disruption be safely controlled during installation or maintenance of communications facilities.

In short, the Township must balance multiple ROW public policy goals that reflect the particular conditions of the Township. These goals apply not only to broadband providers, but also to telephone, gas, electric, water and other providers. These goals are inherently local and reflect the individual and unique conditions of our roads and our local community. They are inconsistent with the Commission's national perspective. While the Township embraces the goal of broadband expansion and has adopted minimal and reasonable regulations for broadband access to the ROW's, it must balance this goal with its own local interests. A "one size fits all" regulatory regime imposed on a national scale simply will not work. It will undermine these local interests and harm broadband deployment, causing extensive delays as municipalities attempt to integrate a national template into its local practices.

D. The Commission Should Not Interfere With Local Right-of-Way Management and Should Take Action to Preempt Pennsylvania's Municipal Broadband Prohibition

The Township's ROW practices as outlined in Section II above are reasonable and flow from the legal authority granted to it by the Commonwealth of Pennsylvania as outlined in Section III above. They do not present any obstacle to broadband deployment. As such, the Township strongly opposes any effort by the Commission to engage in rulemaking or adjudication with respect to municipal ROW management or fees.

In response to the specific questions posed in the Notice regarding "Solutions" (Notice, ¶¶34-50), the Township could potentially support and participate in Commission sponsored educational efforts and voluntary activities (¶37) as well as the compilation of best/worst practices (¶ 38). Any efforts to adopt policy guidelines (¶46), promulgate rules (¶47), make recommendations to Congress (¶44) or establish Commission sponsored mediation (¶42), however, would be an unnecessary and harmful interference with local ROW management.

Having said this, a law in Pennsylvania that is a genuine obstacle to broadband deployment is the prohibition against municipal broadband deployment embodied in Chapter 30 of the Pennsylvania Public Utilities Code. Specifically, Section 3014(h) states that political subdivisions (generally municipalities or counties) are prohibited from offering broadband services to the public for compensation. 66 Pa. C.S. §3014(h). The only exception is if the municipality or county submits a written request to the incumbent local exchange carrier (ILEC),

and if the ILEC decides not to deploy the requested broadband service (at the requested data speeds) in that jurisdiction.[1]

This conditional prohibition on community broadband has had a major "chilling effect" on broadband deployment in Pennsylvania. A large portion of Pennsylvania is comprised of rural communities, and many providers appear to have decided, presumably after performing a cost-benefit analysis, not to deploy broadband in many of these communities. As a result, these communities often have slow and substandard internet service that stymies economic development and impedes advances in education, healthcare and other services.

The Commission is well aware of the rapid growth of community broadband networks throughout much of the nation. With rare exceptions, however, the deployment of such networks is effectively barred in Pennsylvania. We strongly urge the Commission to take the appropriate steps, through either regulation or recommendation of legislation, to preempt the prohibition of municipal broadband networks in Pennsylvania and similarly situated states.

Respectfully submitted,

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cc: National League of Cities
National Association of Telecommunications Officers and Advisors
Pennsylvania League of Cities and Municipalities
Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Commissioners
Pennsylvania State Association of Township Supervisors
The United States Conference of Mayors

[1] If the ILEC agrees to provide the requested broadband service, then it must do so within 14 months of the receipt of the request from the municipality or county. Id.

July 18, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Endorsement of Comments Filed in WC Docket No. 11-59

Dear Chairman Genachowski:

The Pennsylvania League of Cities and Municipalities wholeheartedly endorses the Comments to the Notice of Inquiry filed by its members in WC Docket No. 11-59 regarding Local Right-of-Way Management and the Acceleration of Broadband Deployment.

Sincerely yours,

John A. Gurney Jr.

Executive Director
PLCM