



TeleCommUnity

...The Local Government Telecommunications Alliance

Statement of

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On behalf of the

TeleCommUnity Alliance

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President's Council of Advisors on

Science and Technology

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I. Introduction

Mr. Chairman and Members of the PCAST:

Good morning. My name is Ron Mallard. I am the Director of the Department of Cable Communications and Consumer Protection in Fairfax County, Virginia, and the immediate past president of the National Association of Telecommunications Officers and Advisors. Fairfax County is also a founding member of the TeleCommUnity Alliance.

TeleCommUnity is an alliance of local governments and their Washington associations. We seek to refocus attention in Washington on the need to respect local governments' telecommunications interests. It is on behalf of TeleCommunity that I testify today to share the feelings of local government officials regarding the need broadband access to be not only universally available but also affordable. My testimony will also address the equally important issue of rights-of-way management.

II. Local Government Seeks Universal Availability Access to Affordable Broadband

Local government officials want, need, and promote the universal availability of affordable broadband capacity. Universal access to affordable broadband is in the best interests of our constituents, both business and residential. That this is a widely held belief in local government, is reflected in the policy positions of the National League of Cities, U.S. Conference of Mayors, National Association of Counties and National Association of Telecommunications Officers and Advisors, copies of which I have attached to my testimony.

III. Taxpayer's Property Interests must be protected.

Having made clear local government's commitment to universal access to affordable broadband, local government must part company with many of our fellow broadband proponents. Local government does not support a national policy of blind loyalty and commitment to broadband at any cost. Such an unbalanced approach in favor of broadband deployment results in taxpayers at the local level subsidizing private industry. Local government will not stand idly by and allow such a policy to be enacted.

I don't think I need to outline to anyone that lives in a major metropolitan area that the trenching required for broadband deployment results in disruptions to the community. These disruptions have an adverse impact on local merchants, many of whose clients seek alternatives to traffic pattern disruptions, lack of parking and construction dirt. There are also risks to public safety with potential cuts in gas, power and water lines, not to mention the potential for personal injury and property damage from the street cuts. Finally, there are the added costs to taxpayers of maintaining streets whose useful life is diminished with every street cut regardless of the level of restoration.

These negative near term economic, safety and maintenance issues, all parties seem to acknowledge. The right of the local government and local taxpayers to be paid rent for the on-going use of their assets is not as universally acknowledged.

Local governments are both the property owner and the property manager of the public rights-of-way. State and local elected officials have a fiduciary responsibility to their stockholders—the taxpayers—to manage all public property for its highest and best use.¹

It is this fundamental and traditional local government property interest which Congress intended to preserve by enacting Section 253 of the 1996 Federal Telecommunications Act. Faced with the telecommunications industry lobby and a House Committee proposal to provide below-market prices, the full House of Representatives rejected its own Committee's recommendation. In the only floor amendment adopted to the 1996 Act by roll-call vote, the full House mandated the pre-existing status quo in federal-state-local property law and compensation.

Sound economics and political equity require that private entities using public property for private profit should pay fair and reasonable rents. These rents should reflect the fair market valuation of the rights conveyed, whether by sale, lease, easement, or temporary licenses to use. Rights-of-way are a scarce and valuable commodity. For example, the City of Portland, Oregon annually inventories and estimates the replacement value of its rights-of-way. Portland, a relatively small city, currently attaches a replacement value of \$4.6 billion to its rights-of-way: \$2 billion in real estate costs and \$2.6 billion in construction improvements. Earlier this year TeleCommUnity sought to establish a national value for rights-of-way held by local government.

¹ Local governments, particularly in time of national crisis, have a special governmental responsibility to protect the public health, safety and welfare associated with right-of-way use and occupancy. Local officials must enforce the terms and conditions of occupancy in this valuable and precious real estate to assure correct, decent, non-injurious behavior. They must adopt rules and have the ability to enforce those rules to correct tenant nuisances and impositions on third-party tenants and nearby property owners. When any right-of-way tenant, whether a telecommunications company or otherwise, fails to pay rent, disrupts the other tenants, or imposes unnecessary costs on other users and nearby property owners, local government must have the statutory and contractual authority to act.

A copy of that valuation paper is attached for your review, but if I may summarize, the paper states: “The total value of the land and improvements held in trust by state and local governments for the taxpayer is enormous.² Using conservative assumptions, the value ranges from \$1.1 Trillion for the improvements alone to \$4.7 Trillion for the improvements and the ATF (At the Fence) value. However the cost of acquiring a right-of-way corridor necessarily is more expensive than simply the ATF value of the abutting land. Applying the lowest corridor enhancement factor now employed by appraisers suggests the value is \$7.1 Trillion.”

Telecommunications use of this \$7 trillion dollar asset is a special and permanent use – not just the transitory use of the general public. Telecomm providers have a semi-exclusive, long-term use of particular portions of the public’s rights-of-way. Left to their own devices, broadband providers would transfer their costs of renting this real estate asset from company stockholders to City taxpayers. Local government needs the Administration’s support to ensure such a policy does not become a national practice.

² See *Fair Market Value Analysis For a Fiber Optic Cable Permit in National Marine Sanctuaries*, National Oceanic and Atmospheric Administration (August 2001.) Assigning a value to the rights-of-way is not a case of first impression for federal, state or local government. Federal agencies such as the United States Department of Transportation, the U.S. Department of the Interior (Bureau of Land Management “BLM”), the United States Department of Agriculture (U.S. Forest Service) and the National Oceanic and Atmospheric Administration (“NOAA”) have all been actively engaged in assessing value for rights-of-way for years. Valuation of rights-of-way, and the requirement that government receive fair market value for their use, can be found in regulations (43 C.F.R. Sections 2803 and 2883) statutes, and case law. A whole industry has developed to provide federal, state, and local governments, as well as individual land-owners, with valuations of their rights-of-way. The public side of this industry can be found at the International Right of Way Association <http://www.irwaonline.org/> and the American Public Works Association <http://www.apwa.net>. Private practitioners of evaluating and valuing rights-of-way may be found at the Appraisal Institute <http://www.appraisalinstitute.org/>.

IV. Myth Buster: Franchisee Fees do not retard deployment.

I would also like to put to rest the myth franchise fees and rights-of-way retard broadband deployment.

My community of Fairfax County, Virginia competes head to head for upscale, high-tech businesses and residences with Montgomery County MD. While Virginia does not permit franchise fees, the state of Maryland does. Montgomery County requires a 5% franchise fee from each new telecommunications entrant. Under state law Fairfax County can't,. Yet, there is substantial deployment of fiber in both counties with no significant difference in the amount or location. It is clear that the decision to deploy broadband is controlled by customer density and revenue potential, not by franchise fees.

V. Conclusion

On behalf of TeleCommUnity, I thank you for the opportunity to clarify that local government strongly supports the universal availability of affordable broadband access. Our experiences in partnering with the cable industry, such that by the end of this year over 90% of all cable homes will have access to broadband capacity should speak volumes to our commitment. Still, as the trustees of the public rights of way, and guardians of the local tax base, we can not support any national policy that promotes broadband deployment at any cost.

Thank you and I look forward to your questions.