

FCC Local and State Government Advisory Committee

Advisory Recommendation Number 1:

POLICY STATEMENT ON STATE AND LOCAL RIGHTS-OF-WAY AND TELECOMMUNICATIONS SERVICE COMPETITION

The Committee believes the FCC's action in creating the Committee is a major step toward developing a constructive dialogue between the FCC and the state and local governments. The FCC is currently considering many individual petitions by various telecommunications companies and trade associations to preempt state and local control of rights-of-way. The Committee expresses its commitment to work closely with the FCC Commissioners and staff as they review the various petitions. To begin that process, the Commission today adopts the following statement of principles that it recommends the Commission incorporate as petitions and issues develop before the FCC.

FIRST PRINCIPLES

State and local governments are trustees of the public's rights-of-way. Rights-of-way are real estate property rights of substantial economic value and interest to local communities. The public has a right to fair compensation for occupancy and use of its property.

The FCC is responsible for setting national standards and rules governing the conduct of the interstate telecommunications marketplace to assure fair and open competition that favors neither incumbents nor new entrants.

State, local and FCC officials share the common goals of bringing true and effective competition in telecommunications services to all our citizens as quickly as possible while minimizing the adverse effects on other essential community needs, costs and interests.

The 1996 Telecommunications Act defined the balance between federal and state and local responsibilities in telecommunications. That law designates the FCC as the primary entity responsible for rules and regulations related to the entry into and the offering of interstate telecommunications services. The same law designates states and local governments as the primary entities responsible for rules and regulations related to telecommunications service providers entry into, compensation for use of, and behavior in the public's right-of-way.

The new world of competitive telecommunications presents all levels of government in the federal system with novel questions that require careful and collegial consideration. The FCC brings unique expertise in the technologies and business operations of telecommunications companies. State and local governments bring unique expertise in the valuation and operation of multiple uses of the public's rights of way. The FCC and state and local governments should assume the mutual burden of educating the other parties in their respective areas of expertise. Regulation, preemption, and formal legal action against another level of government should be the last, not the first, recourse to resolve conflicting interests.

Rights-of-way disputes between telecommunications companies and local governments should be resolved in local jurisdictions. The FCC should avoid adopting broad policy statements or decisions that implicate

other matters of state and local interests such as cable television network design without first having full and complete dialogue with the Committee.

COMMITTEE ACTIONS

The Committee is prepared to meet with an appropriate delegation of industry representatives to explore areas of agreement on rights-of-way issues pertaining to state and local governments.

The Committee is prepared to participate in the development of suggestions to "level the playing field" to require incumbent operators pay compensation for rights-of-way that embody fair valuation. The Committee asks that the Commission work with the Committee on possible actions the Commission might take to achieve the result that incumbent operators accept fair and modern valuation for use of the public's right-of-way.

FOR THE FCC LOCAL AND STATE
ADVISORY COMMITTEE

Kenneth S. Fellman, Chair
June 27, 1997