

**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 10, 2010

The Honorable Harry Reid
Majority Leader
The United States Senate
S-221, U.S. Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
The United States Senate
S-231, U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
The United States House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable John A. Boehner
Minority Leader
The United States House of Representatives
H-204, U.S. Capitol
Washington, D.C. 20515

Dear Senate and House Leadership:

On behalf of the nation's local elected officials and advisors, we need your assistance to protect the rights-of-way authority and budgets of our nation's local governments and the citizens they serve. As the Federal Communications Commission (FCC) prepares to submit its National Broadband Plan to Congress on March 17th – as directed by the American Recovery and Reinvestment Act – 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 17th National Broadband Plan, we need your assistance in making sure that the FCC does not establish such a rule in a separate proceeding also pending before it involving Level 3's Petition requesting exactly such a rule.¹

In adding Section 253 to the Communications Act in the Telecommunications Act of 1996, Congress made it very clear – by an overwhelming and bipartisan vote – 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, would 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,

¹ *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.

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 you 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.

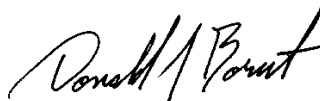
Local officials have always supported and, in fact, advocated for increased broadband deployment. We are well aware of the role that broadband can play in enhancing educational opportunities, promoting economic development, improving health care delivery, assisting in achieving energy efficiency goals, 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 you to assist us in protecting our local communities by contacting the FCC and urging it not to include recommendations in the National Broadband Plan that would in any way preempt local government rights-of-way authority or otherwise undermine state and local budgets.

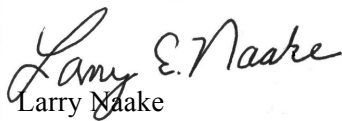
Sincerely,



Tom Cochran
CEO and Executive Director
The United States Conference of Mayors



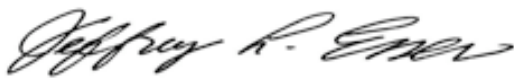
Donald J. Borut
Executive Director
National League of Cities



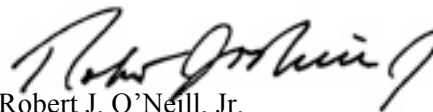
Larry Naake
Executive Director
National Association of Counties



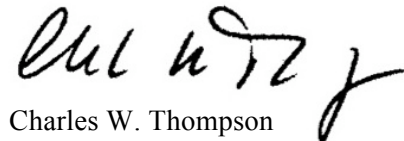
Tonya S. Rideout
Acting Executive Director
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Officers and Advisors



Jeffrey L. Esser
Executive Director and CEO
Government Finance Officers Association



Robert J. O'Neill, Jr.
Executive Director
International City/County Management
Association



Charles W. Thompson
Executive Director and General Counsel
International Municipal Lawyers Association

Cc: United States Senate
United States House of Representatives