



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		May 9, 2011		
Department:		Customer and Utility Services		
Department Head		Mark D. Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
A Resolution by the Mayor of the City of Plano, Texas, providing for opposition to the Federal Communications Commission notice of inquiry relating to acceleration of broadband deployment and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Opposing a FCC Notice of Inquiry relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
This Resolution objects to the FCC's Notice of Inquiry relating to broadband deployment.				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	

MEMORANDUM

TO: Bruce Glasscock, City Manager
FROM: Mark D. Israelson, Assistant City Manager
DATE: April 19, 2011
SUBJECT: FCC NOI

The Federal Communications Commission (FCC) recently issued a notice of inquiry (NOI) relating to the deployment of broadband and the effects of municipal management of rights-of-way (ROW) on that deployment. The NOI makes the assumption that municipal management of ROW delays or stifles completely the deployment of broadband and creates a barrier for companies to enter into the broadband market. This is a false assumption. The City of Plano currently has multiple vendors of broadband operating within the City of Plano including Verizon, AT&T, and Time-Warner. We have encouraged the deployment of broadband based on the request of our citizens and corporations and worked closely with these corporations to deploy their facilities within our City. Our ROW management ordinance and professional relationships with these companies were critical in the safe and successful deployment of their upgraded facilities (AT&T U-Verse and Verizon FiOS) within the past decade. The attached resolution opposes the FCC NOI and the assumption that cities are a barrier to corporations seeking to deploy broadband.

A Resolution by the Mayor of the City of Plano, Texas, providing for opposition to the Federal Communications Commission notice of inquiry relating to acceleration of broadband deployment and providing an effective date.

WHEREAS, on April 7, 2011, the Federal Communications Commission (FCC) issued a notice of inquiry (NOI) relating to the “Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting, WC Docket No. 11-59”; and

WHEREAS, the NOI appears to be based on the premise that local right-of-way regulatory and compensation issues constitute “barriers to entry” for broadband service; and

WHEREAS, the FCC has—in the past—used such NOIs to issue orders that would severely limit municipal authority through federal preemption; and

WHEREAS, the FCC never appointed the *Local Government Right-of-Way Advisory Committee*, as announced by the FCC in the *National Broadband Plan* last year, but rather relied on an industry-dominated panel without any meaningful input from local governments before it issued the present NOI; and

WHEREAS, right-of-way regulation and/or compensation does not present an urban broadband deployment issue in Texas; and

WHEREAS, Chapter 283 of the Texas Local Government Code allows full access to local rights-of-way by virtually all telecommunication providers; and

WHEREAS, Chapter 66 of the Texas Utilities Code allows full access to local rights-of-way by video service providers; and

WHEREAS, large Texas cities long ago adopted stand alone right-of-way management ordinances that protect the health and safety of their residents, and that contain similar provisions that are readily available via the Internet; and

WHEREAS, cities in Texas currently do not impose any fee on broadband services, either as a separate fee to use public rights-of-way or a separate right-of-way rental payment; and

WHEREAS, according to the Texas Public Utility Commission (PUC), there are no significant barriers to deployment of broadband in urban areas; and

WHEREAS, contrary to what the FCC asserts, broadband deployment is higher in high density areas, such as cities (according to the PUC, the lowest availability is correlated to income rather than density, with low broadband availability in low-income areas); and

WHEREAS, according to *Connect Texas*, broadband is available to 94 percent of Texans; and

WHEREAS, the Texas Constitution requires that Texas cities receive fair market value for the use of public property by private corporations, and the fee for the use of public property may not be “cost-based” as suggested by the Chairperson of the FCC; and

WHEREAS, the FCC has no jurisdiction to preempt local zoning rules or right-of-way regulations, or to set Texas right-of-way compensation.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The signatory of this Resolution supports the continued deployment of broadband services throughout the State of Texas and the nation; and

Section II. The signatory of this Resolution believes in the concept of local control; and

Section III. The signatory of this Resolution strongly opposes further federal preemption of local right-of-way management authority and/or rental fees for the use of public property; and

Section IV. A copy of this Resolution shall be sent to the U.S. Senator and U.S. Congressional representative of the signatory, as well as to the Vice President of the United States, the U.S. Conference of Mayors, the National League of Cities, the Texas Municipal League, and the FCC.

Section V. This Resolution shall become effective immediately.

DULY PASSED AND APPROVED this the 9th day of May, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY