

## RESOLUTION 2005-24

### **A RESOLUTION EXPRESSING OPPOSITION TO THE ENSIGN/McCAIN “BROADBAND INVESTMENT AND CONSUMER CHOICE ACT” AND RELATED LEGISLATION SEEKING TO ABOLISH OR OTHERWISE LIMIT LOCAL REGULATION OF PUBLIC RIGHTS-OF-WAY**

**WHEREAS**, there is proposed legislation which will have the effect of abolishing or otherwise limiting a municipality from regulating its own public rights-of-way which includes the right to negotiate and execute franchise agreements with cable, telephone, and other communications entities seeking to use those public rights-of-way for profit; and

**WHEREAS**, this legislation will likely have the effect of curtailing the protections currently offered to municipal citizens who rely upon the municipal government to manage public property for the health, safety and welfare of its citizens; and

**WHEREAS**, this legislation will likely impact the present practice of using franchise agreements to maintain and administer public rights-of-way and to fund the creation and maintenance of channels for public, educational, or governmental use; and

**WHEREAS**, this legislation may constitute an unlawful “taking” of public property by private enterprises in concert with agencies of the United States Government; and

**WHEREAS**, this legislation negatively impacts a municipality’s inherent rights of zoning uses within its community by granting extended and unrestricted authority to private entities to place cellular towers; and

**WHEREAS**, the implied pro-competition intentions of the legislation can be accomplished without the destruction or limitation of local authority to regulate public rights-of-way in the public interest; and

**WHEREAS**, the proposed legislation is in direct opposition to the “safe haven” provisions of the Telecommunications Act of 1996 which guaranteed the inherent rights of local government to manage its public rights-of-way, in recognition of the overriding concerns that local interests can be best served by local governments; and

**WHEREAS**, there exists the potential for local governments to use existing and future telecommunications infrastructure located on public rights-of-way for broadband communication which would promote education, homeland security, and efficiency of government.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Town of Silver City to adopt the following:

1. The Town Council of the Town of Silver City opposes the Ensign/McCain "Broadband Investment and Consumer Choice Act" (Senate Bill S. 1504) and any other legislation proposed in the United States Senate and House of Representatives, collectively referred to as "Video Choice Act" (including HR 3146 and S 1349) which proposes or has the effect of abolishing or limiting municipal authority to regulate the use of its public rights-of-way, its rights to lease or otherwise extend franchise agreements to providers of cable, telephone, and other modes of communication, and the ability of local governments to utilize existing telecommunications infrastructure for broadband communications for the public good.

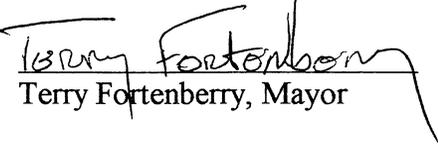
2. The Town Council of the Town of Silver City opposes the above stated legislation, and any other legislation which deprives individual States from regulating quality of service issues for telecommunications providers.

3. The Town Council of the Town of Silver City opposes the above stated legislation, and any other legislation which permits or has the effect of permitting, the limitation of channels to be provided to local government for public, educational, or governmental uses, or any legislation which in any way limits the direct or indirect funding for the creation, maintenance and operation of those channels.

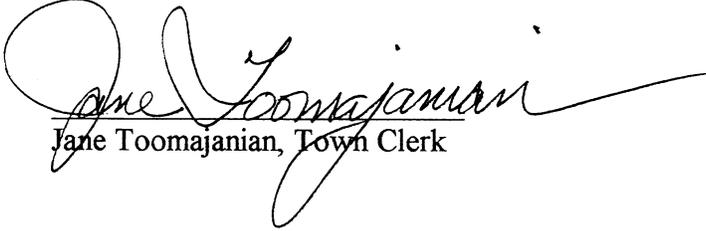
4. The Town Council hereby authorizes the Mayor to take whatever steps he deems necessary to convey the subject matter of this Resolution to any representative or organization of State or Federal Government, specifically including the Senators and Representatives of the State of New Mexico.

The effective date of these regulations shall take effect upon publication.

**ADOPTED AND APPROVED** this 13<sup>th</sup> day of September 2005.

  
Terry Fortenberry, Mayor

Attest:

  
Jane Toomajanian, Town Clerk

