Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Request for Definitive Ruling Regarding	)	
Pass-Thru by Suddenlink Communications of	)	
City of Charleston, West Virginia Municipal	)	MB Docket No. 16-274
Business and Occupation Tax to Subscribers	)	File No. CSR-8925
	)	
To: Office of the Secretary	)	
Attn: Media Bureau	)	

OPPOSITION OF SUDDENLINK COMMUNICATIONS

Cebridge Acquisition, L.L.C. d/b/a Suddenlink Communications ("Suddenlink") hereby opposes the "Request for Definitive Ruling" ("Petition") filed by Victor Grigoraci, CPA, the City Treasurer for the City of Charleston, West Virginia ("Petitioner").[1]

Petitioner objects to Suddenlink's itemization of the City of Charleston's business and occupancy ("B&O") tax on customer bills, and asks the Commission for "a definitive ruling . . . that Suddenlink is not permitted to identify as a line item on each subscriber's bill the [B&O tax], since the transaction is not between Suddenlink and the subscriber."[2] The Petition is premised, however, on the mistaken notion that Section 622(c) of the Communications Act[3]

---

[1] Although styled a "request" for a ruling, Suddenlink is treating the filing as a petition for declaratory ruling pursuant to Rule 76.7 of the Commission's Rules. To that end, Suddenlink requested and obtained multiple extensions of time to file this Opposition through January 13, 2017. In the interim, Suddenlink has attempted – albeit unsuccessfully – to resolve the underlying dispute.

It appears that Mr. Grigoraci filed the Petition in his personal capacity, and not as an official act of the City of Charleston acting through or at the direction of its City Council as required by the City Charter. *See, e.g.,* Charleston, West Virginia Charter at § 6 ("All the corporate power of said city shall be vested in and exercised by council or under its authority . . .") (available online http://www.cityofcharleston.org/government/city-code/ordinances).

[2] Petition at 3.

[3] 47 U.S.C. § 542(c).

affirmatively prohibits the contested pass-through and itemization. Indeed, because the Petition does *not* contend that Suddenlink's billing practice is illegal under West Virginia law, the FCC need not determine here whether a federal communications law favoring itemization preempts a conflicting state restriction on itemization.[4] The sole question here is whether Section 622(c) itself precludes Suddenlink's billing practice, and the Commission squarely held almost a quarter century ago that the answer is "no." Accordingly, the Petition must be denied.

I. SECTION 622(C) WAS DESIGNED TO PROMOTE, NOT RESTRICT, THE ITEMIZATION OF GOVERNMENT-IMPOSED COSTS.

Petitioner fundamentally misconstrues Section 622(c). This statutory provision was adopted in 1992 to *promote* the pass-through and itemization of government imposed costs, *not to restrict* such practices. Senator Lott, in introducing the provision, explained:

> I would like to offer my amendment . . . dealing with the subscriber bill itemization to give the cable companies an opportunity to itemize these so-called hidden costs, to explain to the people what is involved in the charges so they will know it is not just the cable company jacking up the prices. . . . The fact is sometimes the rates have gone up because of hidden, unidentified increases in fees or taxes which the cable [company] has to pay and . . . passes on to the consumers . . . .[5]

---

[4] In fact, the West Virginia Attorney General has explained that utilities regulated by the state PSC are permitted to "designate[] to a consumer his total billing, specifically itemizing the proportionate part of the municipal business and occupation tax . . ." *Mr. William Talbott*, 54 W. Va. Op. Atty. Gen 75 (1971). Suddenlink is not rate regulated as a utility by the PSC, but the ability of entities that are regulated by the PSC to itemize the B&O tax indicates that there is nothing in state law that would preclude Suddenlink from similarly informing customers through a line item of the City B&O tax amount reflected in the total price they pay for service. The Petitioner certainly has not identified any state law precluding the contested itemization.

[5] 138 Cong. Rec. S561-02 (1992). The Commission cited Senator Lott in *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5697 ¶ 545 (1993) ("*Rate Order*") and again in *City of Pasadena*, 16 FCC Rcd 18192, 18201, 18195 n. 13, 2001 WL 1167612 (2001), *aff'd, Texas Coalition of Cities for Utilities Issues v. FCC*, 324 F.3d 802, 810 (5th Cir. 2003) (also citing and quoting Senator Lott).

The Commission emphasized Congress' underlying "accountability" objective when it first implemented Section 622(c) in 1993, explaining that:

> the purpose of Section 622(c) is to assure that there are no regulatory obstacles placed in the way of cable systems identifying certain governmentally imposed costs on subscriber bills. . . . Section 622(c) has to do with increasing political accountability for regulatory costs imposed, by permitting subscribers to be informed that a portion of their bills are related to governmentally imposed obligations.[6]

Contrary to Petitioner's belated argument here, Section 622(c) of the Communications Act does not limit a cable operator's itemization rights to three specifically identified categories (*i.e.,* franchise fees, franchise-related costs, and taxes imposed "on the transaction between the operator and the subscriber"). The Commission settled the issue presented by the Petition in 1993, holding that, under Section 622(c), "System operators are not required by this provision to undertake any such itemization, *nor does the provision, by itself, preclude the itemization of additional costs* (whether or not governmentally imposed)."[7] Indeed, nothing in the text, legislative history, or cases analyzing Section 622(c) suggests that the statute prevents cable operators from itemizing government charges other than the three categories enumerated in Section 622(c). No such restriction exists.[8] The Commission's 1993 holding requires the Bureau to rule that Section 622(c) and the Commission's rules do not preclude Suddenlink's itemization of the B&O tax.[9]

---

[6] *Rate Order,* 8 FCC Rcd at 5697 ¶ 545 (emphasis added.) The Commission subsequently reiterated that point in *City of Pasadena*, 16 FCC Rcd at 18194 ¶ 7.

[7] *Id.*

[8] Instead, a separate provision of the Commission's cable rules requires that cable operators' "bills must be fully itemized . . ." to allow customers to understand the components of the total price. 47 C.F.R. § 76.1619(a).

[9] To the extent that Petitioner complains about the details regarding Suddenlink's B&O tax itemization, the Commission has already addressed those issues in *City of Pasadena*, 16 FCC Rcd at 18201 ¶¶ 21-23.

II. GRANTING THE PETITION WOULD PROVIDE NO CONSUMER BENEFIT AND SIMPLY FRUSTRATE GOVERNMENT ACCOUNTABILITY.

Petitioner never claims that his opposition to Suddenlink's contested billing practice is designed to protect consumers from rate increases. To the contrary, the Petition clearly concedes that "the B&O tax is . . . recoverable in [Suddenlink's] rate structure."[10]

In fact, Suddenlink has an undisputed right to set its cable rates at whatever level it chooses. Pursuant to federal law, the City of Charleston, West Virginia currently has no rate regulation authority.[11] As there is no question that Suddenlink has the legal discretion to "pass through" the B&O tax in its cable rates, banning Suddenlink's "itemization" of the B&O tax would do nothing more than hide the origin of the rate increase from cable consumers – in direct contravention of the accountability objective underlying Section 622(c).

Assuming *arguendo* there were any merit to the Petitioner's argument, the absence of local rate regulation itself would fatally undermine the Petition. As the Commission has explained:

> Fee itemization under Section 622, as is reflected in the legislative history . . ., is intended to inform subscribers that local elected officials are imposing franchise fees so that there will be a measure of political accountability for fees and fee increases. . . *The itemization provisions of Section 622 and the rate provisions of Section 623 are intended to work in tandem* so that the amount of franchise fee

---

[10] Petition at 3.

[11] *See, e.g., Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015); "Notice of Effective Date of Revised Effective Competition Rules," FCC Public Notice, DA 15-1049 (Sept. 17, 2015) ("As a result of the updated rules, a franchising authority will be prohibited from regulating basic cable rates unless it successfully demonstrates that the cable system serving the franchising authority's community is not subject to Competing Provider Effective Competition.").

> added *as an external cost* is the same as the amount itemized on a subscriber's bill.[12]

Because Suddenlink's local cable rates are deregulated, there simply is no basis under the "tandem" provisions of Section 622 and Section 623 of the Communications Act (and the Commission's implementing regulations) to restrict Suddenlink's itemization of the Charleston B&O tax on subscriber bills. Certainly there is no need for the Commission to determine whether the Charleston B&O tax would qualify as an "external cost" for purposes of rate regulation. Suddenlink, after all, has not filed any rate regulation forms claiming the B&O tax as an external cost.

It is telling that the sole Commission authority included in the Petition – *Intermedia Partners of Kentucky, L.P*[13] – addresses a *rate regulation* question of "external cost treatment," which is *not* at issue in this proceeding. Although it might be true that the Charleston B&O tax – based on its "manner of the assessment" – would not qualify for external cost treatment in a rate regulated community, that question need not be addressed. This is not a rate proceeding, and it is immaterial whether, as a rate regulation matter, the Charleston B&O tax qualifies for "external cost" treatment on FCC Form 1240.

Suddenlink has full discretion in Charleston to set its rates, and to accurately itemize the B&O tax on its bills as an element of the final price charged to local customers. Section 622(c)

---

[12] *City of Pasadena*, 16 FCC Rcd at 18201 ¶ 23 (emphasis added). The statute provides that bill itemizations made pursuant to Section 622(c) shall be "consistent with the [rate] regulations prescribed by the Commission pursuant to section 623." *See* 47 U.S.C. § 542(c).

[13] Petition at 1, quoting 14 FCC Rcd 20099 (1999).

does not provide either the Commission or the City with authority to dictate or otherwise restrict Suddenlink's rates, and any attempt to do so would be preempted by 623.[14]

Accordingly, the Commission should reject the Petitioner's request for a declaration that Suddenlink may not itemize the B&O tax.[15]

CONCLUSION

The Petition rests on an egregious misreading of Section 622(c) of the Communications Act. The Commission has held that the three categories of costs mentioned in the statute do not preclude further itemization by cable operators. The statute simply does not preclude Suddenlink from itemizing the B&O tax on customer bills. To the contrary, Suddenlink's itemization of the tax is entirely consistent with Congress' intent that cable customers be made aware of the impact of local fees and taxes on their bills to promote political accountability. The Commission should therefore reject the Petition, and hold that Section 622(c) does not prohibit Suddenlink from itemizing the B&O tax on customer bills.

Respectfully submitted,

Cebridge Acquisition, L.L.C. d/b/a Suddenlink Communications

By: _____

Steven J. Horwitz
Robert G. Scott, Jr.
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006
(202) 973-4200
Its Attorneys

January 13, 2017

---

[14] *See, e.g.*, 47 U.S.C. § 543(a)(1) ("Any franchising authority may regulate the rates for the provision of cable service . . . but only to the extent provided under this section.").

[15] Significantly, the Charleston B&O tax applies to non-cable services (*e.g.*, Internet) offered by Suddenlink. As Section 622(c) certainly does not apply to these non-cable services, granting Petitioner's request would create the odd result of barring the B&O itemization for cable service while leaving it in place for other services.

CERTIFICATE OF SERVICE

I, Nichele Rice, do hereby certify that on this 13th day of January, 2017, a true and correct copy of the foregoing document has been sent via U.S. mail, postage prepaid, to the following:

William Lake, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-C740
Washington, D.C. 20554

Steven A. Broeckaert, Esq.*
Sr. Deputy Chief Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A865
Washington, D.C. 20554

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Katie Costello, Esq.*
Federal Communications Commission
Room 4-C830
445 12th Street, SW
Washington, DC 20554

Paul D. Ellis, Esq.*
City Attorney
City of Charleston
501 Virginia Street East
Charleston, WV 25301

Victor Grigoraci, CPA
City Treasurer
City of Charleston
501 Virginia Street East, Room 203
Charleston, WV 25301

*via e-mail

Nichele Rice