

March 13, 2019

VIA ECFS

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

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch:

NCTA— The Internet & Television Association (“NCTA”) urges the Commission to take action promptly to make clear that Congress has established limits on the ability of state and local governments to impose fees and other requirements on the operation of cable systems.¹ In the absence of specific rulings by the FCC regarding such limits, state and local governments continue to violate the law by imposing duplicative rights-of-way fees² on the provision of non-cable services over cable systems, over and above the 5% cable franchise fee cap that Congress established.

Since NCTA filed its reply comments in this proceeding, a number of additional municipalities have imposed or sought to enforce new fees on certain broadband and telecommunications providers. These fees fall disproportionately on cable subscribers, who are already paying cable franchise fees through their providers to those same municipalities. The fees also impede the ability of cable operators to compete to provide broadband and telecommunications services. Some examples include:

- *Milwaukie, Oregon*: In addition to charging cable operators the 5% franchise fee permitted by the Communications Act, the City of Milwaukie, Oregon recently advised that broadband providers, including the cable operator, must pay a 7% “right of way” fee on high speed Internet revenues. Moreover, the city assesses telecommunications providers, including the cable operator, a 7% license fee on revenue derived from “communications services,” defined broadly to include

¹ See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Further Notice of Proposed Rulemaking, 33 FCC Rcd. 8952 (2018).

² Franchising authorities and other governmental entities cannot avoid the statutory limitation on cable franchise fees by styling impositions above the 5 percent cap as “taxes.” To the contrary, a franchise fee includes “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity” on a cable operator or cable subscriber, or both, solely because of their status as such. See 47 § 542(g)(1) (emphasis added).

voice, ethernet, mobile and cell backhaul. Certain competitors, however, appear to be exempt from these fees.

- *Gladstone, Oregon:* In addition to charging cable operators the 5% franchise fee permitted by the Communications Act, the City of Gladstone, Oregon includes a 5% fee on high speed Internet revenues and also imposes a 5% “right of way use fee” on the same broadly defined “communications services” revenues. Again, certain competitors appear to be exempt from these fees.
- *Veneta, Oregon:* Following a cable operator’s recent upgrade of a cable system in the City of Veneta, Oregon, which enabled introduction of broadband, voice, and other advanced services to city residents, the city advised the cable operator that it would start enforcing a 5% fee on the operators’ broadband revenues, in addition to the 5% franchise fee permitted by the Communications Act.
- *Rochester, New York:* The City of Rochester, New York recently adopted several new fees on the facilities and equipment of telecommunications providers, including cable operators, that purport to compensate the city for use of rights of way, even though the cable operator has already paid a cable franchise fee for that use. This compensation may be paid in cash or, at Rochester’s discretion, in the form of in-kind contributions of telecommunications facilities and/or services.

The continued spread of these “double-billing” practices, which exceed and violate the franchise fee cap for cable operators, underscores the need for the Commission to act expeditiously to affirm that such additional fees on the operation of cable systems are barred by federal law. Without swift action from the FCC, NCTA expects such fees on broadband and telecommunications services to continue to proliferate.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen