

April 26, 2019

ELECTRONICALLY FILED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, DC 20554

Re: In the Matter of 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 Secretary Dortch:

The cities of Milwaukie, Gladstone and Veneta, Oregon (the “Cities”) file this letter in response to a letter filed in the above-referenced docket on March 13, 2019, by NCTA–The Internet & Television Association (“NCTA”). The letter erroneously characterizes the Cities’ fees for use of their rights-of-way as “‘double-billing’ practices, which exceed and violate the franchise fee cap for cable operators.” As explained below, none of the Cities “double-bill” cable operators nor do their fees violate the Cable Act.

The fees NCTA complains of are compensation the Cities impose on all wireline communications providers that own or control facilities in the public rights-of-way. In fact, in Milwaukie and Gladstone, the fees apply to all facilities in the rights-of-way—including gas, electric, water and sewer facilities. As this context makes clear, contrary to NCTA’s assertions, these fees are not imposed on cable operators “solely because of their status as such” and thus are not “franchise fees” as defined in Section 622 of the Act.

Nor is there any “double-billing.” Cable operators do not pay rights-of-way fees on the revenue derived from their cable services *in addition to* the cable franchise fee. Rather, if a cable operator chooses to provide non-cable services, those services are subject to the same fees paid by their non-cable competitors, just as those competitors would have to pay cable franchise fees should they opt to provide cable services via their facilities in the rights-of-way.

NCTA alleges—without explanation—that Milwaukie and Gladstone’s fees exempt “certain competitors.” The only exception either city provides for facilities in the rights-of-way is for wireless attachments, which fees are based on the number of attachments within the rights-of-way consistent with the FCC’s September 2018 rules on small wireless facilities. It is unclear how imposing the same fee on all wireline providers’ facilities in the rights-of-way is in any way discriminatory. As already well stated in the record by the City of Eugene, Oregon:

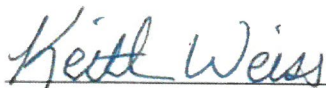
NCTA's position—that cable operators, and only cable operators, are immune from a generally applicable right-of-way fee on telecommunications and broadband service providers—would be discriminatory, not competitively neutral, and would treat likes (wireline telecommunications/broadband services providers) unlike, depending on whether they are also cable operators.¹

In fact, NCTA itself has recognized the importance of a level playing field in its comments in this docket, stating “regulating like services alike is both reasonable and pro-competitive. Indeed, imposing regulatory requirements on one competitor but not on another is more likely to distort the competitive marketplace.”² NCTA ultimately concluded, “it is not at all unreasonable for franchising authorities to ask telephone companies to live by the same rules and regulations as their landline competitors in the provision of cable service.”³ Why, then, is it unreasonable for franchising authorities to ask cable operators to live by the same rules and regulations as *their* landline competitors in the provision of non-cable service?

We respectfully request that the Commission ignore NCTA's mischaracterizations of the Cities' fees and its request to upend the Cities' efforts to ensure all wireline communications service providers using the Cities' rights-of-way are subject to the same fees for the same services.

Respectfully Submitted,

City of Veneta



Keith Weiss, Mayor
Dated: April 26, 2019

City of Gladstone



Tammy Stempel, Mayor
Dated: April 29, 2019

City of Milwaukie



Mark Gamba, Mayor
Dated: 5-7-19

¹ Reply Comments of the City of Eugene, Oregon *et al.*, MB Docket No. 05-311, p. 22 (December 14, 2018).

² Comments of the National Cable & Telecommunications Association, MB Docket No. 05-311, p. 3 (February 13, 2006).

³ *Id.* at p. 19.