Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning High Speed Access	)	GN Docket No. 00-185
to the Internet Over Cable and Other	)	
Facilities	)	

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS

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Among other questions, the NOI asks what effect its actions would have on the ability of local cable regulators to collect a franchise fee, depending on whether cable modem service is classified as a cable service or a telecommunications service. In the comments filed in the notice of inquiry in the above docket, some commenters suggested that classifying cable modem service as a telecommunications service would diminish the ability of local cable regulators to collect franchise and related fees. We disagree.

Provided that the Commission enforces 47 U.S.C. § 201 to ensure that the rates for cable modem service are just and reasonable, the effect of classifying cable modem service as a telecommunications service will simply be to reapportion responsibility for payment of total franchise fees generated by the cable system between the cable operator and others providing "communications service" on the cable system.

As the Commission notes, Section 622 of the Communications Act "gives localities the authority to charge a franchise fee of no more than five percent of the cable operator's gross revenues." Section 622, 47 U.S.C. § 542, provides in relevant part:

Franchise fees

- (a) Payment under terms of franchise
  Subject to the limitation of subsection (b) of this section, any cable operator may be required under the terms of any franchise to pay a franchise fee.

- (b) Amount of fees per annum
  For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services…

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- (g) "Franchise fee" defined
  For the purposes of this section -
  - (1) the term "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;

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- (h) Uncompensated services; taxes, fees and other assessments; limitations on fees
  - (1) Nothing in this chapter shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.
  - (2) For any 12 month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenues derived in such period from the provision of such service over the cable system.
    - (i) Regulatory authority of Federal agencies
      Any federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section.

Under a closed system where the cable operator is permitted to offer a bundled cable modem and ISP service as a cable service, its total revenues from all cable services would be subject to the five percent gross revenue cap.

If, conversely, cable modem service is regulated as a telecommunications service, then the cable company would only be responsible for franchise fees based on its gross revenues from cable service. At the same time, however, Section 622 of the Act provides that the cable regulator may also charge fees for any "communications service" provided by any other entity who uses the cable system. More specifically, the cable franchise authority may assess a fee equal to five percent of the gross revenue derived for "*communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator*." 47 U.S.C. § 542(h). Thus, charges to subscribers by ISP's (including the cable company's affiliates) that are in excess of the fees paid by the ISP (or the subscriber) for cable modem service would be subject to the five percent fee.[1]

/S/

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[1]Commission regulation to ensure that cable companies do not charge unreasonable fees for cable modem service is essential to ensure that the level of franchise fees that cable regulators can collect will not be adversely affected. If cable companies can charge inflated rates for cable modem service, not only will this discourage access by unaffiliated ISPs, it will also reduce gross revenues subject to the fee governing communications services as excessive access charges squeeze ISP rates.