



**NEWTON COMMUNICATIONS ACCESS
CENTER INC.**

Building community through access to technology

90 Lincoln St. • P.O. Box 610192 • Newton, MA 02461-0192

May 3, 2002

William F. Caton
Acting Secretary
Federal Communications Commission
445 12th St. SW
Washington DC 20554

RE: GN Docket No. 00-185

Dear Mr. Caton,

Attached is a Comment on the Initial Regulatory Flexibility Analysis in the matter of GN Docket No. 00-185, concerning the Internet Over Cable Declaratory Ruling and the Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities."

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Berg". The signature is fluid and cursive, written over a light-colored rectangular background.

Paul D. Berg
Executive Director
Newton Communications Access Center, Inc.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities)	GN Docket No. 00-185
)	
Internet Over Cable Declaratory Ruling)	
)	
Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities)	CS Docket No. 02-52
)	

**RESPONSE TO THE IRFA IN THE
DECLARATORY RULING
AND
NOTICE OF PROPOSED RULEMAKING**

Adopted: March 14, 2002

Released: March 15, 2002

The Commission's Initial Regulatory Flexibility Analysis is silent on the possible significant impact on a significant number of small entities, namely cities, towns, and Public-Educational-Governmental access facilities, which are frequently established as non-profit corporations.

47 U.S.C. §542(b) provides that "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...from the operation of the cable system to provide cable services."

Throughout the country, literally thousands of local cities and towns have collected these permitted franchise fees, and used them to create PEG access or community media centers. Since the debut of cable Internet service, with its addition of new revenues to cable operators, many municipalities have used the additional fees to help citizens gain access to the Internet, learn how to navigate and publish on the web, build enterprise and institutional broadband networks, and obtain information on how to protect children and families from some of the less beneficial aspects of the unregulated Internet. All of these activities were funded from cable subscriber fees on cable modem revenue and other cable services.

On the average, these fees on cable modem service revenue represent from 15 percent to 30 percent of the total of gross revenues fees in various communities, depending on the availability and penetration of cable modem service.

The Commission's Declaratory Ruling that cable modem service is not a "cable service," but rather an "information service" will have extremely deleterious economic impact on thousands of small governmental jurisdictions and small organizations.

The City of Newton, Massachusetts has designated a 4% franchise fee on cable services be paid to the Newton Communications Access Center, Inc. (NCAC), on gross revenues from all cable services, including cable modem service. As of March 15, 2002 and the Commission's Declaratory Ruling, NCAC has begun to lose a significant portion of revenues as a result. We estimate that the City and NCAC will suffer a 27.84% reduction in fees received if we are unable to collect a franchise fee on cable modem revenues. This is a devastating blow to our operations, and we are not alone in this. Every community with a community media center, PEG access center, or community computing center which has relied on these funds will be forced to cut back services to community

residents, businesses, non-profits, and schools. Furthermore, cities and towns which have had a significant increase in their own regulatory burden as a result of the installation of new fiber optic capacity to carry the cable modem signals will now face a significant reduction in the franchise fees. Many communities use these fees to administer safety and public convenience in the public rights of way with respect to cable operators' equipment installations and maintenance.

We urge the Commission to reconsider its decision to classify cable modem service as an information service, not subject to the 5 percent franchise fee permitted in 47 U.S.C. §542(b). The negative economic impact of this ruling on small governmental jurisdictions and small organizations is not mitigated by any regulatory clarity the Commission would gain.

We strongly urge the Commission toward the establishment of differing compliance requirements for local cities and towns with regard to cable modem franchise fees, and to permit the continued collection of such fees on cable modem gross revenues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Berg", is centered on the page.

Paul D. Berg
Executive Director
Newton Communications Access Center, Inc.
90 Lincoln Street, P.O. Box 610192
Newton, Massachusetts 02461-0192
617-965-7200, Ext. 17
paulb@newtv.org