

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

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Notice of Proposed Rulemaking	)	
	)	
Appropriate Regulatory Treatment for	)	CS Docket No. 02-52
Broadband Access to the Internet Over	)	
Cable Facilities	)	
	)	

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**COMMENTS OF THE CITY OF SPRINGFIELD, MISSOURI**

The City of Springfield, Missouri, files these comments in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Springfield believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Authority to Regulate Franchise Fee Payments from Communications Services.

The FCC has requested guidance and suggestions as to its authority with respect to regulation of franchise fee with respect to services offered over a system built pursuant to a cable service franchise. The City of Springfield notes for the FCC that Section 542(i) of the Cable Communications Policy Act of 1984 as amended subsequently in 1992 and 1996, references the FCC authority to regulate franchise fees. It states,

"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."

Therefore, the FCC must have affirmative authority from the Cable Act to regulate the amount of the franchise fee.

The City of Springfield, Missouri respectfully suggests to the FCC that its authority to regulate or control franchise fees payments is limited to the affirmative power granted to it in Section 542(c) on itemization of franchise fees on subscriber bills. There is no other affirmative grant of regulatory power within Section 542 for the FCC to regulate. The restriction of Section 542(b) must be enforced by a cable operator through a court action, not through FCC regulatory proceedings. This is quite practical because each franchise is unique in whether or not it deals with cable service only or other revenue generating activities over the system as with Springfield's. Therefore, although the FCC may determine that cable modem services are something other than "cable service" as defined in the Act, its decision cannot serve to regulate franchise fee payments under franchises granted to cable operators. Rather, this is a private enforcement action and an interpretation of contract law.

2. Pre-empting franchise fee payments does not encourage deployment of any technology.

The City of Springfield would also point out that whether or not the franchise fee for broadband is "passed through" to subscribers or not paid at all has no effect on delivery of broadband services in a community. Rather, what will happen is no doubt what has happened in Springfield. Within one week of the cable operator stating it would not pay the franchise fee any longer to the City, Mediacom raised rates on broadband over and above what it had been paying in franchise fees. It has not announced any intention to build out or offer services to others in the community who do not have access to this service. Rather, it has taken advantage of the FCC ruling to make more money for itself while not improving the service itself.

Pass-through costs are not determinative of deployment of technology. They only impact the final subscriber bill. Springfield voters passed the City's franchise and approved a broadly defined gross receipts definition for the franchise fee. The subscribers who vote on such franchises should be listened to. The cable operator makes a business decision only as to whether or not to offer broadband services or infrastructure. In Springfield, the decision has been to not offer it to local businesses of a certain size and smaller. Pass through should be a local issue.

3. Statutory Interpretation and Equal Protection Requirements.

The City of Springfield respectfully suggests that the provisions of Section 542 must be read to bring to life the legislative intent of Congress on franchise fee caps for cable service and other communications services. To that end, the City calls the FCC's attention to Section 542(h) which allows a separate fee or assessment on "other

communications service provided by such person over a cable system [which is charged to subscribers] but not received by the cable operator."

What does this section mean? It means that resellers of cable modem service can be charged a franchise fee. It is inconsistent with Congress' conduct in enacting the Cable Act and subsequent communications legislation and the Equal Protection Clause of the Fourteenth Amendment to believe that Congress allowed resellers to be charged a franchise fee, but not the actual occupier of the right-of-way for that same service when the cable operator is the actual provider of service. Congress did not encourage a "shell" game of corporate ownership. All should be charged the same for use of the right-of-way. The FCC should not encourage such a shell game either or allow a situation to exist where some cable subscribers are treated differently on their bills than others.

4. Our community and the status of cable modem service.

Springfield, Missouri is a municipality of 156,000. It is served by Mediacom Communications Corporation, which has approximately 45,000 subscribers within the city limits. The cable system serving our community offers subscribers seventy channels, plus premium channels, digital channels and digital music. Cable modem service is offered in our community.

5. Our franchise and cable modem service.

Our franchise was issued in 1994 and did not directly address cable modem service. However, under our franchise the definition of gross revenues is broad enough to include any revenue from the system including cable modem service revenue. Section 3.13 of the franchise defines gross revenue as follows: "'Gross Revenues' means all revenues derived directly or indirectly by the company, its affiliates, subsidiaries, parents, or any person in which the company has a financial interest from or in connection with the operation of the system pursuant to this contract, except this shall not include sales tax or grants from federal, state or local governments, as well as grants from not-for-profit foundations or corporations." Pursuant to that provision, we were entitled to receive franchise fees on cable modem service. We received \$80,305.72 in cable modem franchise fees in 2001 and \$21,804.97 in cable modem franchise fees through March 15 of 2002. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. We estimate that we will lose \$100,000 over the next year if we cannot charge a fee on revenues from cable modem service.

6. How we regulate cable modem service.

We do not regulate the service itself. We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. During 2001, 11% of the complaints and comments received by the City of Springfield related to cable modem services specifically. Cable modem service complaints received in the first quarter of 2002 are 12.5% of all complaints. Responding to these complaints requires significant staff time and effort. Because Mediacom and its predecessor treated modem services as cable services, we assisted with consumer complaints.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

#### 7. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We are taking steps to do so and identified this as a priority in our Telecommunications strategic plan. We have partnered with our Library District to assist it in making Internet access available to anyone. Our business community is largely made up of small businesses which Mediacom does not serve. We also believe that in order to achieve the promise of broadband, broadband has to be available to the

entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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June 17, 2002