

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

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

COMMENTS OF THE CITY OF BROKEN ARROW, OKLAHOMA

These comments are filed by the City of Broken Arrow, Oklahoma, in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Broken Arrow 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. Our community and the status of cable modem service.

Broken Arrow is a City of a population of over 80,000. It is served by Cox Communications Central II, Inc., which has approximately 18,116 subscribers. The cable system serving our community offers subscribers The Cable System shall maintain at least 860 MHZ capacity.

The Cable System is capable of delivering no less than one hundred sixty (160) analog and/or digital video and audio programming channels, to Subscribers. Cox Communications Central II just completed its upgrade and Cable modem service in just now offered in our community.

2. Our franchise and cable modem service.

Broken Arrow is in the process to adopt a new franchise. In fact, it will be presented to the City Council tonight for possible adoption. The proposed franchise does not require the cable operator to provide cable modem service throughout the community, but the cable operator has the capability to provide the cable modem service and is currently providing it to those subscribers for whom it is available in areas throughout the community. Under the proposed franchise gross revenues from cable modem services shall be included in calculating the franchise fees unless otherwise determined not to be a "Cable Service" under applicable federal law. The specific language is as follows:

Gross Revenues shall include, but not be limited to, all subscriber and customer revenues derived directly or indirectly, including revenues for basic cable services; additional tiers; premium services; pay per view; program guides; installation, disconnection or service call fees; fees for the provision, rental, or lease of converters, remote controls, additional outlets and other customer premises equipment; Franchise Fees paid by subscribers; revenues from the use of leased access channels; advertising revenues from the System; revenues and compensation from home shopping programming; and revenues from the provision of cable modem internet access service, unless such service is determined not to be a "Cable Service" under applicable federal law.

Pursuant to that provision, we are entitled to receive franchise fees on cable modem service. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms. The specific language is as follow:

Cable Service or Cable Services. The one-way transmission to subscribers of (i) video programming or (ii) other programming service and subscriber interaction, if any or (iii) other lawful service by the Cable System. It includes such other services determined by federal statute, regulation, or final federal court determination to be Cable Services.

The City can only imagine how much money it will lose over the years if it cannot charge a fee on revenues from cable modem service.

Neither the franchise requirements or the fees have prevented or delayed the roll-out of cable modem service in our community.

3. How we regulate cable modem service.

The City receives complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. Responding to these complaints requires significant staff time and effort.

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 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.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. 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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