

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 Seattle

These comments are filed by the City of Seattle in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Seattle 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 certain aspects of cable companies in their provision of non-cable services, particularly with respect to customer service and privacy protection, as provided under the Cable Act. The City further raises concern regarding the NPRM with respect to protection for access to the Internet and the future development of the broadband marketplace.

1. Applicability of Section 632 of the Communications Act. (47 CFR 552) for Customer Service.

The City of Seattle agrees with the FCC's conclusion in paragraph 108 of the NPRM that cable modem service as a service of the cable operator is included for the purposes of section 632 of the Communications Act. (47 CFR 552). This interpretation will provide important protections for customer service.

The City of Seattle believes that the Commission should preserve the ability of local franchising authorities to enact and enforce consumer protection and customer service standards regarding cable modem service. The classification as an information service should not remove this important service, often a local monopoly, from local customer service protection. Local jurisdictions have extensive experience working through customer service issues

with the cable operators and would provide a readily accessible venue for customer service issues, without adding another, distinct, customer service oversight for the cable provider.

For example, during the abrupt transition from @Home service to @attbi last December, the City of Seattle's Office of Cable Communications received over 500 calls from dissatisfied customers complaining about the inability to reach customer service representatives, get on-line after hours of waiting, and failure to receive proper credits for service interruptions. There was no other place for these customers to turn. Even in more routine times, with an installed base of over 42,000 cable modem subscribers, cable modem customers will have legitimate customer service problems that need support in a manner similar to the cable television customers.

2. Applicability of Section 631 of the Communications Act. (47 CFR 551) for Privacy Protection

The City of Seattle agrees with the FCC's conclusion in paragraph 111 of the NPRM that cable modem service as a service of the cable operator is included within the definition of "other services" for the purposes of section 631 of the Communications Act. (47 CFR 551). This interpretation will provide important protections for customer privacy.

Preserving the applicability of the privacy provisions of 631 to cable modem service – including the ability of local governments to adopt and enforce privacy standards that are consistent with Section 631-- is consistent with, and furthers, the Commission's goals of promoting: "the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner," "the continued development of the Internet and other interactive computer services and other interactive media," and preserving the "vibrant and competitive free market the presently exists for the Internet".

One of the major factors inhibiting the growth of on-line commerce is the fear consumers have that their financial transactions, medical records and other personal information sent over the Internet are not adequately safeguarded. Providing the reassurance of an accessible venue for privacy concerns can mitigate this fear.

In addition, the failure of the FCC to preserve the applicability of the strong privacy protections of Section 631 to cable modem service may result in an inhibition of subscribers' 1st amendment rights to free expression. Fears that personal opinions, voting records or other expressions could be subject to collection and use by unauthorized parties will inhibit the ability of the Internet to be a vibrant and free market for ideas and greatly curtail the ability of the medium to be an avenue for the active civic discourse essential to a democratic society.

The City of Seattle recently adopted several amendments to its Cable Customer Bill of Rights (CCBOR) consistent with section 631, to protect the privacy of its cable subscribers. The CCBOR specifically extends these protections to cable modem service. Section 631 preserves the ability of local government to protect its citizens from potentially invasive practices by cable operators, and the FCC does not have the authority to deny local governments the right to adopt and enforce privacy standards consistent with Section 631. Cable modems should not become a tool for collecting personal information for the purpose of creating consumer profiles based on a subscriber's personal interests or shopping habits. Once such profiles are created they would be very valuable to advertisers and others and the temptation to disclose such data would be great.

In summary, Section 631 provides a predictable regulatory framework consistent with Congress' intent to place a high priority on consumer privacy. It establishes the desired balance between the right to privacy of the consumer and the cable operator's legitimate business needs.

3. Access Requirements

The City of Seattle supports the ability of consumers to have choice in their Internet Service Provider, irrespective of the methods of access. Choice in a marketplace is a powerful force to improve service and reduce cost. The City has recognized the nascent nature of the cable modem service market and has, in its agreements with cable operators, refrained from any attempt to impose multiple ISP access requirements at this time. However, the City believes, that under the regulatory scheme of the information service categorization, that the FCC assumes the critical burden to promote choice and therefore must, as postulated in paragraph 92 of the NPRM, monitor the changing market conditions and be prepared to use its authority to secure choice should the markets fail to develop choice at a reasonable pace. This review may be accomplished, among other ways, as part of the FCC annual Section 706 review. In assessing whether it is appropriate to utilize its regulatory authority, the FCC should look at the experience of providers, both private and public, whose systems allow choice, recognize reasonable time frames for the implementation of approved technical standards that support choice, such as Multi-Protocol Label Switching (MPLS), and other market factors. A future without choice is not an acceptable option.

4. Assurance of Access to the Internet

The City of Seattle requests that the FCC develop rules to assure that cable modem service providers do not restrict access to Internet content. In paragraph 62 of the NPRM, the Commission concluded that operator control over content is a key distinguishing feature that separates cable modem service from a cable service. Control over

content can be exercised in either a positive or negative fashion. Traditionally in cable television, the control is positive by selection of the channels on the system; however, control over content is equally exercised in the negative, by restricting subscribers from accessing content. The FCC must develop rules that assure that cable modem consumers' right to access information throughout the Internet is not restricted by the cable modem service provider. Such rules should recognize such business necessities that may arise such as temporary blockages for security purposes. In the absence of establishing such rules, the Commission must monitor any efforts of cable modem operators to restrict the access of subscribers of its cable modem service to any materials on the Internet. This concern is especially critical in the absence of choice in a marketplace. The City of Seattle, in its agreements with cable modem service providers, has received such assurances in the past. The City is concerned that the classification of cable modem service as an information service, absent Commission vigilance and action if necessary, may facilitate such content control, even though such control would be inherently inconsistent with the logic of that classification.

5. Use and Occupancy of Rights of Way

The City of Seattle wants to amplify one aspect of the comments of the Alliance with respect to rights of way. With regard to paragraph 102 of the NPRM, the Commission must recognize that some installations of cable modem service add to the burden on the right of way beyond that required for the provision of cable television service. Some technical architectures require the addition of substantially larger network nodes to address the cable modem service than would otherwise be required. These network nodes may need to occupy additional space in the right of way and inconvenience the users of the right of way beyond the burdens imposed by the cable television system. This contradicts the Commission's apparent implicit assumption that the franchise for a cable television service inherently covers all the burdens on the right of way of a cable modem service. For these reasons, it is important that the Commission affirm the authority of local governments over a cable operator's use of rights of way to provide cable modem service, including, but not limited to, the authority of local governments to require authorizations to use rights of way for such purpose and to enforce existing authorizations, and the right of local governments to compensation for the use of such rights of way within the context of the authorities they possess as political sub-divisions of their respective state.

6. The City Of Seattle And the History And Status Of Cable Modem Service.

The City of Seattle is a City of approximately 565,000. It is served by AT&T Broadband and Millennium Digital Media, which have approximately 170,000 subscribers. Both cable systems serving our community offer cable modem service. Our franchises were issued in 1996. The franchise for TCI (predecessor to AT&T Broadband) included a unique negotiated provision; TCI would use Seattle as an early trial site for cable modem service. If after the trial, the service was commercially viable then it would be provided throughout the Seattle franchise area when the system was rebuilt, as required by another franchise provision. The agreement included provisions that the service, for tax purposes, would be treated comparably to the municipal tax provisions for telecommunications and that no other franchise fee would be charged, to provide parity with the anticipated DSL based services. The provisions included protection for access to the full Internet (no content restriction), privacy provisions consistent with Section 631, and a provision for limited local peering. The privacy, full access to the Internet, and peering provisions were re-iterated and further amplified, based on our mutual experiences at the time of the transfer of franchise control to AT&T Broadband as the service was running in the area of the City that had been rebuilt. Shortly after the transfer, AT&T Broadband completed the rebuild and rolled out cable modem service through the franchise area as required by the negotiated franchise provisions. Millennium Digital Media also deployed cable modem service throughout its service area as it completed its rebuild. Millennium Digital Media competes with AT&T Broadband in limited sectors of the City of Seattle, so in these areas consumer have some choice of provider. The City has issued an overbuild franchise to Western Integrated Networks with similar protections for cable modem service consumers, but to date no construction activity has occurred and the prospects are not encouraging at this time. The City of Seattle is served with DSL service through multiple providers, but DSL service is not ubiquitous due to distance factors. Thus, despite many efforts of the City of Seattle to promote broadband services, many consumers may receive broadband access to the Internet from a single provider.

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Respectfully submitted,

/s/ Matthew M. Lampe

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