

CITY OF TAWAS CITY

CITY HALL

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TAWAS CITY, MICHIGAN
48764-0568

July 3, 2002

Hon. Michael Powell, Chairman
Federal Communications Commission
Room 344
445 12th St. S.W.
Washington, DC 20554

Re: FCC Declaratory Ruling, GN Docket No. 00-185, CS Docket No. 02-52
(the "FCC Decision"); Relationship of Internet Service and Cable Franchise
Fees

Dear Chairman Powell:

On behalf of the City of Tawas City we wish to register strong concern on the unprecedented action you have taken in your March decision and Notice of Proposed Rulemaking on cable modems. In one order you have attempted to usurp both the powers of both Congress and state and local governments and violate the 11th Amendment to the U.S. Constitution, all in a manner detrimental to consumers. We ask that you reconsider and withdraw from these actions.

Your order usurps the powers of Congress by purporting to take action (reclassifying cable modem service as an information service) which only Congress can do. This is evident from the so-called Tauzin-Dingell Bill which is making its way through congress. Your order attempts to do what Congress in the Tauzin-Dingell Bill believed required legislation. This is stark evidence that your order is improper.

Your order also improperly infringes on the authority of state and local governments by indicating that cable companies can use their lines for cable modem service (or, apparently, other services) without additional local approval or compensation. The U.S. Supreme Court has long ruled that the Fifth Amendment to the U.S. Constitution (which prevents the government from taking property without compensation) protects state and local units of



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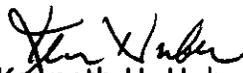
government just as much as it protects private property. We do not believe that you can take a permission granted a company to construct a line in certain areas for one purpose and then allow them to expand their lines anywhere throughout the city for other purposes without new agreements and appropriate compensation.

The Order also violates state's rights and the 11th Amendment especially in light of the U.S. Supreme Court's recent broad interpretation of state sovereignty and immunization of states against agency action. This decision and its underlying principles are directly applicable here where you are acting at the request of providers and are disregarding in many instances state constitutional provisions which specifically place the responsibility for rights of way with local units of government.

Because you apparently believe that only you have jurisdiction over cable modem matters, do you now intend that you and your staff will handle cable modem customer service matters? If so, the FCC will need to add hundreds of people to handle complaints from citizens across the country that until now have been handled by cities such as ours.

We, therefore, strongly suggest that you withdraw your March order and Notice of Proposed Rulemaking in this matter.

Very sincerely,


Kenneth H. Huber
City Manager

KHH:pgm

c: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Secretary, Federal Communications Commission

cc: Commissioner Kathleen Q. Abernathy
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