

**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 Internet Over Cable Facilities)	CS Docket No. 02-52
)	

REPLY COMMENTS OF COMCAST CORPORATION

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Comcast Corporation (“Comcast”) hereby submits its reply to the comments submitted by other parties in response to the above-captioned Notice of Proposed Rulemaking.^{1/} The first-round comments present a compelling case why the Commission should (i) continue to exercise its policy of vigilant restraint with regard to cable Internet services and (ii) clarify that state and local government efforts to impose additional regulatory requirements are preempted.

^{1/} *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798 (2002) (cited herein, as appropriate, as “*Declaratory Ruling*” or “*Notice*”).

I. INTRODUCTION AND SUMMARY

As Comcast pointed out in its initial comments,^{2/} the development of cable Internet services is an astounding success. Residential consumers today can experience the Internet at speeds vastly greater than were available to American households just a few years ago. The Internet is now delivered to millions of homes through competing firehoses, instead of a monopoly straw. This not only improves the quality of the familiar Web-surfing experience but also enables entirely new applications.

Consumers enjoy these benefits mainly because one group of companies – cable companies – did precisely what the Telecommunications Act of 1996 (“1996 Act”) contemplated. They have invested tens of billions of dollars of private capital to build new facilities to deliver advanced communications and information services. They have made high-speed Internet services available to tens of millions of households, and have already signed up more than eight million subscribers. They spurred telephone companies to unleash broadband technology that they had withheld from the market for more than a decade. And they have stimulated the development of new broadband applications and services.

These developments should be cause for celebration. Regrettably, instead, some parties ignore all these benefits and merely see reasons for new regulations or new opportunities for taxation. They could not be more mistaken. What high-speed cable Internet service needs is for government to stay the course and not impose new burdens.

^{2/} A shorthand citation form (*e.g.*, NCTA at 5) is used throughout this reply citing to initial comments filed on or about June 17, 2002. The full names of all parties referenced, along with shorthand descriptors used here, are listed in Attachment A.

A careful review of the extensive record in this proceeding can only strengthen the arguments presented in Comcast's initial comments. Comcast supplied evidence to show that the Commission's approach to cable Internet services should be governed by the pro-competitive and deregulatory policy that Congress established in the 1996 Act and that this Commission has consistently and successfully pursued. Comcast also provided numerous reasons why interstate information services have long been free of federal and state regulation and should remain so. Comcast further demonstrated that there is no legal or policy justification for state and local governments to impose additional franchise requirements, franchise fees, customer service standards, or privacy requirements.

Many other parties provided similar or additional reasons to support these conclusions. The record is especially compelling on three pivotal points:

- The marketplace is functioning properly. This is demonstrated by significant investment, ever-expanding deployment, growing competition among multiple platforms, unrestricted consumer access to content, and emerging multiple ISP arrangements between cable operators and third-party ISPs;
- There is no basis for the Commission to impose any requirements on cable Internet service that do not apply to other information service providers; and
- State and local regulation must be curtailed. The local franchising authorities' ("LFAs'") rights-of-way responsibilities do not justify requiring separate franchises; the law does not permit any franchise fees on cable Internet services; there is no basis for LFAs to regulate customer service or privacy, or to impose public, educational, or government ("PEG") access requirements for cable Internet services; and there is no basis for any state regulation of this interstate information service.

II. THERE IS OVERWHELMING EVIDENCE THAT THE COMMISSION SHOULD CONTINUE TO FOLLOW ITS HANDS-OFF APPROACH AND EXERCISE REGULATORY RESTRAINT WITH REGARD TO CABLE INTERNET SERVICE.

A. The Commission Should Not Veer from its Course of Regulatory Restraint.

1. The Record Demonstrates that the Marketplace Is Developing Robustly.

Above all, the comments in this proceeding make clear that the Commission's "hands-off" approach has worked.^{3/} There is no evidence that would call into question the Commission's prior orders rejecting a multiple ISP requirement as unnecessary to encourage high-speed cable Internet services that provide consumers with a choice of ISPs.^{4/} To the contrary, as Comcast and numerous other parties have shown, the

^{3/} Charter at 14 ("the statutory 'hands-off' policy has animated the Commission's successful policy towards enhanced services") (citation omitted); ACA at 6 ("[t]he Commission's policy of regulatory restraint has been a key factor in the deployment of [cable Internet service]"); AOLTW at 7 ("a continuation of the [Commission's] policy of 'vigilant restraint' is the appropriate policy for now"); Cablevision at 2 ("[t]he Commission's hands-off regulatory policy has been a resounding success"); Motorola at 1-5 (the FCC's policy of "vigilant restraint" is working and there is no basis for departing from this market based approach).

^{4/} See generally *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, *Third Report*, 17 FCC Rcd 2844 (2002) ("*Third Section 706 Report*"); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd 20913 (2000) ("*Second Section 706 Report*"); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, *Memorandum Opinion and Order*, 15 FCC Rcd 9816 (2000); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Report*, 14 FCC Rcd 2398 (1999) ("*First Section 706 Report*"); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, *Memorandum Opinion and Order*, 14 FCC Rcd 3160 (1999).

marketplace is functioning properly as deployment continues to increase, as competition from other platforms grows, and as significant investment proceeds apace. Moreover, as the Commission predicted, cable operators are moving forward with multiple ISP arrangements. The Commission should not now veer from its deregulatory course.

As Comcast demonstrated in its initial comments, the high-speed services market has experienced explosive growth in the last few years.^{5/} For one thing, there is significant and accelerating growth in broadband deployment.^{6/} In addition, the supply of innovative high-speed Internet products continues to increase as cable, DSL, and other technologies (*e.g.*, satellite and wireless) create competing products.^{7/} Competition has provided a large and growing number of choices for consumers in the broadband service they select. And, as a result, consumer subscribership continues to rise rapidly.^{8/}

^{5/} Comcast at 7-9.

^{6/} *First Section 706 Report* ¶ 36; *Second Section 706 Report* ¶ 8; *Third 706 Report* ¶¶ 89-90.

^{7/} DBS offers two-way high-speed Internet access. *See, e.g.*, DirectTV's DirectWay Internet Website at <http://directv.direcway.com>. Wireless providers of high-speed Internet service also are continuing to develop. *See A Fixed Wireless Internet Service Provider*, FRONTIER BROADBAND (marketing fixed wireless Internet services to the Richmond, Virginia area), available at <http://www.frontierbb.com/services> (Services – Business Access web-page visited July 30, 2002); *Motorola Announces 5 GHz Broadband Internet Access Solution*, BROADBAND WIRELESS, June 29, 2002 (announcing Motorola's new fixed wireless access system), available at <http://www.convergedigest.com/Wireless/broadbandwireless.asp>; *see also Verizon Kicks the Tires on Fixed Wireless*, BROADBAND DAILY, Aug. 6, 2002 (Verizon Wireless announced that it is conducting a trial of its broadband fixed wireless technology in Fairfax, Virginia), available at <http://www.broadband-daily.com>.

^{8/} Cable Internet services had a reported 8.0 million subscribers at the end of the first quarter this year. Robert Sachs, *Industry Perspective: Connecting America to the Future, and a More Promising Present*, CABLEFAX, May 6, 2002. DSL subscribership reached “4.4 million at [the] end of [the fourth quarter last] year.” *See Telecom*, COMMUNICATIONS DAILY, Feb. 13, 2002, at 8.

The comments filed by others supply additional details, but confirm the central proposition that the broadband marketplace is healthy and growing.^{9/} The parties rely on the same conclusions reached by the Commission in proceeding after proceeding to show that there is significant and accelerating growth in broadband deployment and competition among service providers.^{10/} Further, the evidence demonstrates that new technologies for delivering Internet services continue to emerge, while cable and DSL offerings continue to expand.^{11/} Moreover, the record reflects that subscribership numbers continue to climb.^{12/}

^{9/} Cox at 16 (“broadband access . . . is healthy and growing”); Arizona Cable at 10 (“the current state of broadband is one of robust competition, diverse technologies and innovation”); NCTA at 33 (a “competitive marketplace . . . already exists for high-speed broadband services”); Charter at 5-8 (“the broadband market is exceedingly competitive and has experienced market growth in the past few years”); HTBC at 5-6 (“broadband services market is expanding”); Cablevision at 4 (the broadband market continues to expand).

^{10/} See, e.g., Charter at 8, n.20 (relying on FCC’s February subscribership data, Charter reports that “[t]he number of lines deployed to provide high-speed services grew 45 percent for cable modem service, 36 percent for DSL, and 73 percent for satellite or fixed wireless technologies”); AOLTW at 7 (relying on the Commission’s *Third Section 706 Report*, AOLTW argues that “broadband services are characterized by deployment in a reasonable and timely manner”); ACT at 10 (accord); NCTA at 14 (“[a]lready, as the Commission has found, deployment of facilities to provide high-speed Internet access is proceeding at a rapid pace”).

^{11/} The parties provide evidence that new technologies continue to emerge. Comcast at 8 n.14; Verizon at 4 (two-way satellite holds a small market share and is likely to grow rapidly in the next few years); Charter at 5-6 n.14 (satellite technologies are beginning to create competing products). Further, the Commission recently reported that high-speed connections to end-users by means of satellite technologies increased by 9% during the second half of 2001. See *High-Speed Services for Internet Access: Status as of December 31, 2001, Report*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, July 23, 2002, at 2, available at <http://www.fcc.gov/wtb/stats> (“*High-Speed Statistics*”). The parties also show that DSL and cable providers continue to differentiate their service offerings. See, e.g., Charter at 8 (noting the progress cable and DSL providers have made in expanding and improving their operations); Cox at 18 (cable operators are looking into ways to provide multiple

Even since the first-round comments, the Commission itself has provided additional evidence that the high-speed Internet market continues to grow. According to Commission data, the number of high-speed Internet subscribers increased from 7.1 million to 12.8 million lines from December 2000 to December 2001, which is a surge of 80.3 percent for the year.^{13/} In addition, Commission data show that the number of subscribers to cable Internet services almost doubled last year^{14/} and DSL subscribership likewise almost doubled.^{15/} Moving forward into 2002, DSL subscribership has continued to grow rapidly.^{16/}

While some parties, including SBC,^{17/} assert that cable dominates the broadband Internet market, both the record and the Commission's most recent data demonstrate otherwise.^{18/} It is clear that the marketplace for Internet services is still in the early stages of development and is robustly competitive,^{19/} and that a vast and growing number of

tiers of cable Internet services "in order to offer consumers an even wider range of prices and speeds of Internet access").

^{12/} Charter at 8; AOLTW at 7; ACT at 10; AT&T at 28.

^{13/} See *High-Speed Statistics* at 5, Table 1.

^{14/} *Id.* (cable Internet rose from 3.6 million to 7.1 million from December 2000 to December 2001); see also *High-Speed Internet Subscribers Soar -- FCC*, REUTERS, July 24, 2002 (there were 5.2 million cable Internet subscribers in June 2001, up from 3.6 million in 2000), available at <http://www.ispworld.com/Reuters/BreakingNews>.

^{15/} *High-Speed Statistics* at 5, Table 1 (from nearly 2.0 million to nearly 4.0 million).

^{16/} See CABLEFAX DAILY, *Research*, May 6, 2002, at 2 (DSL growth rate was 79% in the first quarter of 2002).

^{17/} SBC at 4-6 ("cable modem service [is] the market leader").

^{18/} The Commission has reported that there are "multiple paths for high-speed service in the last mile [with] cable and certain wireline technologies . . . more firmly established." *Third Section 706 Report* ¶ 42.

^{19/} Even with the rapid growth, only about one-eighth of U.S. homes have chosen high-speed Internet access. This translates to approximately one-quarter of PC-equipped homes. Thus, there remains substantial room for this market to grow.

consumers have a choice among high-speed Internet platforms.^{20/} Even Verizon, despite its frequent efforts to hamstring broadband competition by regulatory means, acknowledges that the “broadband market . . . is fully competitive,” evidenced by “a continuing increase in consumer broadband choices within and among the various delivery technologies” and notes that “no group of firms or technology will likely be able to dominate the provision of broadband services.”^{21/} The fact that DSL subscribership may still lag behind cable Internet service subscribership is directly attributable to the incumbents’ failure to deploy the technology until cable companies (as well as CLECs) deployed competitive offerings.^{22/}

Comcast and several others demonstrated that the success of cable Internet service is largely attributable to the very substantial investments cable operators have made in network upgrades that enable the provision of cable Internet services (among other services).^{23/} According to Cox, “cable companies . . . [have] invested billions of dollars and [have taken] enormous risks to develop the technology and operational support

^{20/} SBC at 31 (market for broadband Internet access is “intensely competitive”); ACT at 10 (“consumers truly have a wide array of choices . . . when it comes to Internet connectivity”); NCTA at 29 (“the marketplace is already ensuring that consumers will have a choice of facilities-based providers of high-speed Internet access”).

^{21/} Verizon at 2 (citations omitted).

^{22/} Deborah A. Lathen, *Broadband Today: A Staff Report to William E. Kennard, Chairman, Federal Communications Commission, on Industry Monitoring Sessions Convened by Cable Services Bureau* (Oct. 1999), at 27 available at <http://www.fcc.gov/Bureaus/Cable/Reports/broadbandtoday.pdf> (“*Cable Bureau Report*”).

^{23/} Cablevision at 9 (“[t]he cable industry has invested heavily to bring the fruits of broadband and high tech services to Americans”); ACA at 1 (“small cable companies are making . . . substantial investments in infrastructure necessary to deliver cable modem services”); NCTA at 25 (cable operators have invested in facilities upgrades).

needed to provide high-speed Internet access to consumers across the country.”^{24/} In fact, *the cable industry has invested over \$60 billion in rebuilds and upgrades, which is “approximately \$1,000 per subscriber in upgraded systems.”*^{25/} Comcast alone has invested over \$5 billion in upgrades and rebuilds.^{26/}

The successful operation of the marketplace is also demonstrated by record evidence, which clearly shows that, without government compulsion to do so, cable operators are entering into voluntary arrangements to offer their customers a choice of ISPs. As the evidence shows, cable operators have made real progress in negotiating and entering into third-party ISP arrangements since the Commission’s last investigation into the issue. For example, the initial comments of AT&T, Cox, and Comcast all indicated that these companies have entered into multiple ISP arrangements.^{27/} Progress in implementing those arrangements is continuing,^{28/} with Comcast’s offering of United

^{24/} Cox at 2.

^{25/} Comcast at 9 n.18 (citing Robert Sachs, *Industry Perspective: Connecting America to the Future, and a More Promising Present*, CABLEFAX DAILY, May 6, 2002).

^{26/} See Comcast at 9 n.20 (citing *Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Applications and Public Interest Statement: Description of Transactions, Public Interest Showing, and Related Demonstrations at 10 (Feb. 28, 2002)).

^{27/} AT&T at 14-15 (AT&T has entered into multiple ISP arrangements with Earthlink, NET1Plus, and Internet Central); Comcast at 11 (Comcast undertook to permit United Online to offer its high-speed Internet service over Comcast’s network in Nashville and Indianapolis); Cox at 35 n.71 (“Cox is conducting an ongoing technical trial in El Dorado, Arkansas with the participation of unaffiliated ISPs AOL Time Warner and Earthlink”). Due to government requirements imposed as a result of its unique circumstances, AOL Time Warner also maintains agreements with multiple ISPs. See, e.g., AOLTW at 17-18 (describing AOL Time Warner’s multiple ISP arrangements).

^{28/} Cox has now announced that it is in negotiations with Internet providers, including AOL Time Warner, to provide Cox’s cable modem subscribers with joint

Online's service now in commercial operations.^{29/} Moreover, additional cable operators are preparing to initiate technical trials.^{30/}

Although cable operators continue to make significant progress in creating a multiple ISP environment over their cable platforms, there are still technical issues that need to be worked out for multiple ISP access.^{31/} High-speed Internet services share the spectrum used to provide cable and other services over the cable plant, and (unlike telephone twisted pair) a single wire serves numerous homes. Many cable operators are still in the preliminary phases of working through these technical issues; others, like Comcast, have already begun commercial operations but have not completed addressing the "significant technical and operational complexities associated with dealing with multiple ISPs."^{32/} Whatever the challenges of addressing these issues on a commercial

Internet access, and might sign a commercial agreement with one of them by the end of this year. Dinah W. Brin, *Cox Commun Posts Rev, Cash Flow, Subscriber Growth in 2Q*, DOW JONES NEWSWIRE, July 31, 2002, available at <http://online.wsj.com>.

^{29/} Also, in the time since initial comments were filed, Earthlink has now begun commercial operations over AT&T Broadband's cable systems in Seattle. *EarthLink Starts High-Speed Service over AT&T Broadband*, REUTERS, July 6, 2002, available at http://www.ispworld.com/reuters/breaingnews/bn_archive.htm.

^{30/} E.g., Charter at 3-4 ("Charter actually has contacted several ISPs and is engaged in substantive negotiations with ISPs to commence a multiple ISP access trial").

^{31/} There is no merit to SBC's claim, SBC at 17, that no technical impediments exist with regard to the provision of multiple ISP access. The simple fact that Comcast, AOL Time Warner, and others are implementing multiple ISP arrangements in various markets does not mean that all technical complications of doing so have magically been eliminated. As the Commission itself has recognized, the provision of cable Internet services is technically complex and supporting the provision of multiple ISPs' services over a shared-bandwidth platform is more so. *Declaratory Ruling* ¶¶ 12-19; see also *id.* ¶ 32 ("technologies and business models used to provide cable modem service are also complex and are still evolving").

^{32/} *Application for Consent to Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee,*

(business-to-business) basis, the imposition of regulatory requirements could only dramatically complicate the matter.

2. Cable Internet Customers Have Access to the Full Array of Content Available on the Internet.

Notwithstanding the contrary implications in comments filed by the High Tech Broadband Coalition, Amazon, and others,^{33/} cable Internet customers enjoy unrestricted access to the full array of content on the Internet. The provisions of Comcast's subscribership agreements cited by the High Tech Broadband Coalition^{34/} are not designed to "restrict access" to Internet content but to ensure effective management of shared bandwidth.^{35/} Comcast's high-speed Internet service is principally a residential noncommercial service, and is not designed to facilitate massive web-hosting operations or meet the heavy demands of commercial users. Moreover, the pricing and the costs for the basic residential service do not anticipate the telephone and technical support or the

MB Docket No. 02-70, Reply to Comments and Petition to Deny Applications for Consent to Transfer Control, Declaration of Mark A. Coblitz ¶ 33 (May 21, 2002) ("*Coblitz Decl.*").

^{33/} HTBC at 6-13 (arguing generally that cable companies have imposed "restrictions on broadband consumers' access to content, applications, and devices"); Amazon at 6-8 (asserting that "[b]roadband Internet service providers may intentionally impede consumer access to Internet-based information, products and services"); Vermont Public Service Board at 6-7 (arguing that cable operators have commercial incentives to restrict content and to steer customers to preferred sources (*i.e.*, affiliated news sources)); ALOAP at 71-72 ("[t]he operator decides what services will be available, and directly controls the use of the service"); City of Seattle at 3-4 (asserting that the Commission should adopt rules to prevent cable Internet providers from restricting access to content); ACLU at 3 (cable companies' "technical control over the content they deliver is complete"); CDD at 11-13 ("the Commission should reverse its tentative decision to leave broadband content to the discretion of cable monopolists").

^{34/} HTBC at 11-13.

^{35/} For additional elaboration on these points, see the attached Declaration of John Donahue attached hereto as Attachment B ("*Donahue Decl.*").

systems drain that commercial users place on the company.^{36/} These bandwidth management tools allow Comcast to preserve the integrity of its service for all of its customers and keep Comcast's costs, and the prices it charges to consumers, in check.^{37/}

Far from restricting the content that consumers can access, cable companies have in fact done more than anyone else to enable consumers to enjoy the richness of the Internet at speeds that make the experience rewarding. There is no basis for suggesting that cable operators, having introduced consumers to this experience, can or would take it away.^{38/} Comcast's own high-speed offering allows its customers to access the fullest array of content, to create their own personal web pages, and to store personal electronic files.

There is no evidence whatsoever that cable Internet service providers are blocking certain traffic or degrading the services provided to their customers, and there is no reason to believe that they ever will do so. Given that demand for Internet services continues to be variable and sensitive,^{39/} to the extent that cable operators were to impose restrictions on its customers' access to desirable content, the certain result would be to

^{36/} Comcast is experimenting with versions of its service that offer expanded bandwidth at prices commensurate with enhanced value and features.

^{37/} *Donahue Decl.* ¶ 15

^{38/} Although cable operators may offer proprietary content, as the Media Institute points out, click-through access allows consumers to access a wide array of content and "even substitute a home page or first screen from a different source." Media Institute at 6 (citation omitted); *see also Declaratory Ruling* ¶ 87.

^{39/} *See, e.g., Commerce Secy. Repeats Promise to Stimulate Broadband Demand*, CABLE MONITOR, March 18, 2002, at 8 (broadband is available to about 70 million homes but a substantial number of consumers are not yet actually using it); John B. Horrigan and Lee Rainie, *The Broadband Difference: How Online Americans' Behavior Changes with High-Speed Internet Connections at Home*, Pew Internet and American Life Project, June 23, 2002, at 8 (consumer demand for broadband is pervasively uncertain and difficult to predict), available at <http://www.pewinternet.org>.

increase demand for DSL and other services that compete directly with cable Internet service. Moreover, notwithstanding the explosive growth in broadband subscribership, the vast majority of Internet users still use narrowband, and cable operators face the challenge of persuading them that the additional features of high-speed Internet access are worth the additional cost.^{40/} That value proposition would be far less enticing if access to content were not unfettered.

This is not just a matter of theory but is also a matter of fact. Indeed, as the sworn declaration of Mark Coblitz states, cable companies have every incentive “to encourage and facilitate the creation of diverse and compelling broadband content.”^{41/} This is so because, if such content were created, it would attract more customers to broadband

^{40/} Narrowband services compete with broadband services and some regulatory authorities, including the CRTC, have concluded that the two services comprise a single market. See, e.g., *Regulation under the Telecommunications Act of Certain Telecommunications Services Offered by “Broadcast Carriers,”* Telecom Decision CRTC 98-9, July 9, 1998 (Canadian Radio-television and Telecommunications Commission has concluded that the market for Internet services is a single market comprised of broadband and narrowband services), available at <http://www.crtc.gc.ca>. By contrast, in connection with the AOLTW merger, the FCC has concluded that there was a market for “high-speed Internet access services, as distinct from narrowband services.” See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee*, CS Docket No. 00-30, *Memorandum Opinion and Order*, 16 FCC Rcd 6547 ¶ 69 (2001). In so doing, however, the Commission recognized “that the exercise of defining relevant markets is inherently dynamic, reflecting ongoing changes in the costs of providing various services and in the tastes and preferences of consumers.” For these reasons, the Commission noted that “[i]t would be particularly appropriate to revisit issues of market definition in a period of rapid technological change and service convergence, as the factual predicates underlying a market definition in one proceeding may no longer be valid at the time of another proceeding.” *Id.* ¶ 69 n.202.

^{41/} *Coblitz Decl.* ¶ 29; see also Jeanne M. Follman, *Content and Connection in a Broadband World*, ON THE INTERNET (in 1996, AOL determined that providing unlimited access to World Wide Web, in addition to its proprietary content, would best meet consumer demand), available at <http://www.isoc.org/oti/articles/0700/follman.html>.

services and would help persuade customers to switch from dial-up services.^{42/} If a cable company were to attempt to restrict its customers' access to content, "it would cause an uproar among its subscribers and damage its Internet business – ultimately driving customers to switch to [the company's] competitors."^{43/}

Likewise, there is simply no basis for singling out cable Internet service providers and imposing requirements that other online service providers do not have to meet. MSN, Earthlink, and Brand X Internet do not have to be compelled to permit their customers go wherever they wish on the Internet, and neither do Comcast or other cable providers of Internet service. Any such requirement would involve the direct regulation of the Internet, which the Commission has already eschewed and Congress has expressly directed the Commission to avoid.^{44/}

In short, no regulation is needed to ensure access to Internet content. At most, the Commission should continue to monitor the marketplace and intervene only if new (and unlikely) circumstances justify such intervention.

B. The Record Confirms that a Multiple ISP Requirement Cannot Be Justified in Law.

Despite the conclusions already reached by the Commission in the *Declaratory Ruling*, parties favoring a multiple ISP requirement base their arguments on the belief that cable Internet service is a Title II service.^{45/} The Commission already considered

^{42/} *Coblitz Decl.* ¶ 29.

^{43/} *Coblitz Decl.* ¶ 28.

^{44/} 47 U.S.C. § 230; *see Telecommunications Act of 1996*, Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, *reproduced in the notes under 47 U.S.C. § 157 (1996)*.

^{45/} Texas AG at 2-4 (the Commission should reexamine its classification of cable Internet service to ensure that like services are treated alike and subject to the same open

that argument carefully and decisively rejected it in the *Declaratory Ruling*.^{46/} Moreover, the Commission's decisions on that issue is being addressed in judicial review proceedings^{47/} that are not relevant to this *Notice of Proposed Rulemaking* (which properly assumes decisions reached in the *Declaratory Ruling* – including the findings that cable Internet service is an interstate information service and is not (and does not include) a Title II telecommunications service – as the basis for going forward).

Accordingly, any effort to justify a compulsory multiple ISP requirement in this *Notice of Proposed Rulemaking* must necessarily be based on the Commission's authority under Title I. That title does *not* authorize the imposition of such a requirement. As the record reveals, the Commission can only use its Title I authority when it is reasonably necessary to the effective performance of the Commission's responsibilities,^{48/} or, as Cox clarifies, to counter a threat unforeseen by Congress, over which the Commission has

access requirements); Amazon at 10 (the “statutory authority used to mandate open broadband ISP access . . . depends upon whether cable modem service ultimately is found to be a telecommunications or information service”); City Coalition at 17, 30 (cable Internet service should be classified as a cable service to allow the LFAs to continue to regulate and to “impose [an] access requirement[] on cable [Internet] service”); City of New Orleans at 4-5 (cable Internet service should be classified as a cable service to allow local authorities to impose open access requirements on cable operators); Earthlink at 11 (“the Commission has the statutory authority to adopt a multiple ISP access requirement” because “the cable-based transmission underlying Internet access service [is] a common carrier telecommunications service”); ACLU at 1-2 (cable Internet service is a telecommunications service and should be regulated like a common carrier, regardless of its method of transportation); City of Seattle at 3 (the Commission's classification of cable modem service should be reviewed to ensure that consumers have their choice of Internet service provider).

^{46/} *Declaratory Ruling* ¶¶ 38, 39, 59-60 (determining that cable modem service is an interstate information service and not a telecommunications or a cable service).

^{47/} The Ninth Circuit is considering the petitions for review. *Brand X Internet Serv., et al. v. Federal Communications Comm'n*, Docket No. 02-70518 (9th Cir., filed March 25, 2002).

^{48/} NCTA at 5; AT&T at 18; People of California at 4 n.6.

explicit authority to regulate.^{49/} In this case, the Commission cannot use its Title I authority because no party has identified any specific responsibilities to which assertion of its authority over cable Internet service would be ancillary.^{50/} As NCTA explains, in none of the Supreme Court cases acknowledging the Commission's ancillary jurisdiction did the Court rely on Title I as a sufficient independent basis for regulation.^{51/} Rather, in each of the cases where the exercise of Title I authority was upheld, the Supreme Court concluded that the Commission's exercise of its Title I authority was reasonably ancillary to some other statutory provision including, for example, the Commission's Title III authority.^{52/}

Any attempted exercise of the Commission's Title I authority would be most suspect in situations where Congress has demonstrated a desire to *constrain* the agency's authority.^{53/} And that is precisely the situation with respect to interstate information services. The Commission has already determined that the 1996 Act should be read to

^{49/} Cox at 7.

^{50/} See *California v. FCC*, 905 F.2d 1217, 1240 n.35 (1990) (holding that Title I must be "ancillary" to the exercise of specific statutory responsibilities contained in another title of the Communications Act).

^{51/} NCTA at 8.

^{52/} See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 698 (1979) (holding that the Commission's ancillary jurisdiction over cable television prior to Title VI was "delimited by its statutory responsibilities over television broadcasting") ("*Midwest Video*"); *United States v. Midwest Video Corp.*, 406 U.S. 649, 669-70 (1972) (holding that the Commission had ancillary jurisdiction pursuant to Title I *because of* its Title III responsibilities to regulate cable) (emphasis added); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) ("[T]he Commission's authority to regulate CATV . . . is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting").

^{53/} *Midwest Video*, 440 U.S. at 708.

preserve the *Computer II* framework,^{54/} including particularly the unregulated status of information services. In so doing, the Commission carefully analyzed the statute's language, context, and history, as well as the statements of numerous Senators (including McCain, Ashcroft, Ford, Kerry, Abraham, and Wyden), to show that Congress did not intend to expand regulation to currently unregulated services.^{55/} Thus, the agency found expanding regulation to information services would be "inconsistent with the deregulatory and procompetitive goals of the 1996 Act."^{56/}

The record is even stronger with regard to a particular class of information services, including those at issue in this proceeding. As to those classes, Congress established an unambiguous "*policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.*"^{57/}

Moreover, as the evidence supplied by others shows, there is no basis to impose common carrier obligations on information services based on notions of "regulatory parity."^{58/} Nonetheless, the ILECs argue that, if the Commission continues to regulate their (tariffed) broadband services under Title II, the Commission would have to impose the same Title II regulations on cable Internet services.^{59/} They further maintain that, if the Commission imposes Title II-like regulations on one provider of high-speed Internet

^{54/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report to Congress*, 13 FCC Rcd 11501 ¶ 45 (1998) ("*Stevens Report*").

^{55/} *Stevens Report* ¶¶ 37-38, 40-48.

^{56/} *Stevens Report* ¶ 47.

^{57/} 47 U.S.C. § 230(b).

^{58/} Charter at 8; Cox at 74-75; AT&T at 53; NCTA at 41-42.

^{59/} BellSouth at 2, 9; SBC at 7-9; USTA at 7; Verizon at 17.

services, it cannot “forbear” from imposing the same regulatory obligations on cable Internet service providers.^{60/} This line of reasoning, however, is not based on any substantive legal analysis. Rather, it is the ILECs’ transparent attempt to pursue a separate agenda that is rightly being addressed in a separate proceeding.^{61/}

In point of fact, it is *not* the law that all services offering similar capabilities must be regulated identically. ILECs and CLECs are regulated differently (even different classes of ILECs are regulated differently), just as cable, DBS, and OVS are regulated differently.^{62/} Congress created the regulatory distinctions. Only Congress, not the Commission, may change this regime.^{63/}

^{60/} USTA at 9-10; BellSouth at 8; SBC at 32.

^{61/} See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, CC Dockets Nos. 02-33, 95-20, 98-10, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002).

^{62/} Compare 47 U.S.C. § 251(b) (obligations of LECs) with 47 U.S.C. § 251(c) (obligations of ILECs); see 47 U.S.C. §§ 251(f)(1), (f)(2) (special provisions for certain ILECs), §§ 271-275 (special provisions for RBOCs); see generally 47 U.S.C. §§ 335, 338 (statutory requirements for DBS), §§ 541-47 (statutory requirements for cable services), § 573 (statutory requirements for OVS); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, *Report and Order*, 13 FCC Rcd 23254 ¶¶ 56-61 (1998) (stating that “DBS and cable are distinct services, warranting distinct [public interest] obligations”). In this respect, the 1996 Act continues a trend that has been underway for more than two decades. See *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, *Further Notice of Proposed Rulemaking*, 84 F.C.C.2d 445 ¶¶ 6, 54 (1980) (exempting competitive carriers from certain Title II requirements and recognizing that telephone companies with differing characteristics can and should be regulated differently).

^{63/} For a more extensive discussion of the flaws of the ILECs’ “regulatory parity” arguments, see Comcast’s comments in CC Docket No. 00-185, at 18-24 (Dec. 1, 2000).

III. THERE IS NO BASIS FOR LOCAL REGULATION OF CABLE INTERNET SERVICES.

A. LFAs Cannot Impose an Additional Franchise Requirement for the Provision of Cable Internet Service.

Comcast recognizes that management of rights-of-way is a legitimate function of municipal government. Nevertheless, cable operators already have franchises that account for municipal control of street cuts (timing, restoration, etc.). There is no basis for an *additional* requirement that accounts for facilities that are already regulated pursuant to the cable operator's franchise agreement.^{64/}

^{64/} The Supreme Court recently made this same point in an analogous context. *National Cable & Telecomm. Ass'n v. Gulf Power Co.*, 534 U.S. 327, 122 S. Ct. 782, 789 (2002) (holding that "providing commingled services" did not deprive a cable system of the access rights secured to it by the Act through its provision of cable services). Because cable Internet service is furnished by a licensed cable operator and does not impose any additional "use" on a city's rights-of-way, there is no statutory basis for a city to exercise its right-of-way management authority over cable Internet service. See *Entertainment Connections, Inc. Motion for Declaratory Ruling*, FCC 98-111, *Memorandum Opinion and Order*, 13 FCC Rcd 14277 ¶¶ 62-63 (1998) (provider of satellite master antenna television service was not obligated to comply with the franchise requirements of Title VI because it did not own, manage, or control the cable facilities and did not add to the existing burden placed on the right-of-way); see also *TCI Cablevision of Oakland County, Inc., Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. § 541, 544(e) and 253, CSR-4790, Order on Reconsideration*, 12 FCC Rcd 21396 ¶¶ 39-40 (1998) (local franchising authorities do not have authority to manage use of the public rights-of-way by a cable system "separate and distinct from its cable franchising authority"). As applied to other service offerings such as telecommunications and video dialtone, the courts have refused to allow the LFAs to impose additional franchise requirements on carriers. See *Bell Atlantic-Maryland v. Prince George's County*, 49 F. Supp. 2d 805, 816 (D. Md. 1999) (use of the public rights-of-way is not implicated until the carrier "physically impacts the public rights-of-way by installing, modifying, or removing [its] facilities"), *vacated and remanded on other grounds*, 212 F.3d 863 (4th Cir. 2002); *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 193 F.3d 309 (5th Cir. 1999) (no Title VI franchise was necessary for the provision of video services analogous to video dialtone for the company that had equipment located on private property, or for the second company whose lines provided transport and who had a franchise with the city).

In any case, an additional franchise requirement for cable Internet services is preempted by law.^{65/} The Commission has already preempted state and local regulation of information services. In *Computer II*, the Commission preempted the states from regulating in this area and concluded that “[the] efficient utilization and full exploitation of the interstate telecommunications network would best be achieved if [information] services are free from public utility-type regulation.”^{66/} As a matter of federal law, entry and exit regulation – as well as regulation of the terms and conditions of service – is forbidden

Moreover, the record in this proceeding compels a determination that Title VI provides no basis for the imposition of an additional franchise requirement. Section 624 specifically constrains state and local authority to regulate non-cable services, including most particularly information services.^{67/} and any claims that section 624 only restricts local authorities in limited respects are erroneous. Indeed, parties advancing such claims base statutory interpretations on a highly selective and pervasively flawed reading of section 624.^{68/} From the plain words of the statute at section 624(a), it is clear that “[a]ny franchising authority may *not* regulate the services, facilities and equipment provided by

^{65/} AOLTW at 26-27.

^{66/} *Amendment of Section 64.702 of the Commission’s Rules and Regulations* (Second Computer Inquiry), Docket No. 20828, *Memorandum Opinion and Order on Further Reconsideration*, 88 F.C.C.2d 512, 541 n.34, *aff’d sub nom., Computer and Communications Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983) (“*Computer II Further Recon. Order*”); *see also Amendment of Sections 64.702 of the Commission’s Rules and Regulations* (Third Computer Inquiry), CC Docket No. 85-229, *Report and Order*, 104 F.C.C.2d 958 ¶ 343 (1986) (“*Third Computer Inquiry*”).

^{67/} 47 U.S.C. § 544(b)(1).

^{68/} ALOAP at 30-31; Metropolitan Government of Nashville at 6-7.

a cable operator except to the extent consistent with [Title VI].”^{69/} Congress drafted this section “to provide procedures for and impose limitations on a franchising authority,”^{70/} not to give LFAs a blank check to regulate non-cable communications services.^{71/}

Section 621(a)(2) further strengthens the showing that LFAs may not impose additional requirements on cable Internet providers. Section 621(a)(2) clarifies that, once a franchise has been granted, the “franchise shall be construed to authorize the construction of a cable system over public rights-of-way.”^{72/} Contrary to the position taken by some franchising authorities,^{73/} this section does not limit the services that a cable operator can provide solely to cable services. Rather, as the legislative history reveals, once the cable operator has constructed its facilities in the rights-of-way, they can provide “any mixture of cable and non-cable services they chose”^{74/} without first obtaining a separate, and additional, franchise.

Despite the clear limitations imposed by Title VI, some LFAs continue to argue that the authority to impose an additional franchise requirement on cable Internet service providers is derived from state and local law and not from the provisions of Title VI.^{75/}

^{69/} 47 U.S.C. § 544(a).

^{70/} H.R. Rep. No. 98-934, at 68 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655.

^{71/} *Id.* at 29.

^{72/} 47 U.S.C. § 541(a)(2).

^{73/} City of New York at 24; ALOAP at 46-47.

^{74/} H.R. Rep. No. 98-934, at 44.

^{75/} ALOAP at 26-27 (arguing that local governments ability to franchise non-cable services does not depend on an affirmative grant from the federal government); Metropolitan Government of Nashville at 6 (arguing that local governments derive authority to franchise entities that occupy the public rights-of-way, including non-cable services, from state law); Mount Hood at 3-4 (arguing that local regulation permits local regulation of cable modem service); City of New York at 19 n.41 (asserting that local

These LFAs rely on the Fifth Circuit's decision in the *City of Dallas v. FCC*^{76/} to bolster this claim, but that case is unavailing. At issue in that case was whether local authorities could require franchises for open video system ("OVS") operators, who by statute were not subject to section 621 of the Communications Act. Holding in the affirmative, the court reasoned that, while section 653 of the Act eliminated the Title VI franchise requirement for OVS operators, the LFAs nonetheless retained their preexisting authority to require a franchise as a condition of allowing use of the public rights-of-way.

Cable operators are in a completely different situation. Unlike the OVS operators in the *City of Dallas*, cable operators *already* hold franchises. The terms of these agreements already provide cable operators with all the authority they need to use the rights-of-way. Likewise, they provide LFAs with all the power they need (though perhaps not all that they want) to ensure that rights-of-way are not abused and that they are compensated for such use.

Moreover, as *City of Dallas* makes clear, section 621 of the Communications Act (which applies to cable operators but not to OVS operators) both "codified *and restricted* local governments' independently-existing authority."^{77/} Other provisions of Title VI, which likewise "place limits on the conditions and limitations that a local franchising authority may impose,"^{78/} also apply to cable operators but not to OVS operators. Thus, *City of Dallas* does not even remotely support the proposition that LFAs can impose a

governments have "authority under common law, state law, and or local law" to franchise the use of the local streets for the provision of information services).

^{76/} 165 F.3d 341 (5th Cir. 1999).

^{77/} *Id.* at 348 (emphasis added).

^{78/} *Id.* at 349.

separate franchise requirement on franchise-holding cable operators who merely wish to add cable Internet services to their already-franchised cable facilities.

The LFAs' assertions that an additional franchise is necessary to account for the additional burdens that cable Internet service imposes on the rights-of-way is equally unavailing.^{79/} In support of their claims the LFAs argue that cable Internet service burdens the rights-of-way because it requires:

- the installation of new electronics;^{80/}
- new coaxial spokes that are equipped with backup batteries;^{81/}
- larger pedestals, boxes, and encasements;^{82/} and
- the installation of larger hub sites, additional nodes, and fiber to provide for adequate upstream capacity for non-cable services.^{83/}

These claims are erroneous. In fact, the addition of cable Internet service does not impose any additional burdens on the rights-of-way.^{84/} As explained in the attached Declaration of John Donahue, the extraordinary investment in upgrading and rebuilding systems that cable operators have made over the past several years was not driven by their desire to add high-speed Internet services (which, after all, typically consume only

^{79/} Alamance County at 1; Caswell County at 1; City of Archidale at 1; City of Asheboro at 1; City of Burlington at 1; City of Eden at 1; City of Graham at 1; City of High Point at 1; City of Lexington at 1; City of Randelman at 1; City of Reidsville at 1; Davidson County at 1; Guilford County at 1; Randolph County at 1; Rockingham County at 1; Town of Elon at 1; Town of Gibson at 1; Town of Haw River at 1; Town of Jamestown at 1; Town of Liberty at 1; Town of Madison at 1; Town of Mayodan at 1; City of Mebane at 1; Town of Oak Ridge at 1; Town of Ramseur at 1; Town of Yanceyville at 1; City Coalition at 18; City of Concord at 1; City of New York at 3, 20; City of Philadelphia at 3; City of San Diego at 1; Town of Boone at 1; ALOAP at 26.

^{80/} MACC at 3; ALOAP at 41.

^{81/} City of New York at 29-30.

^{82/} MACC at 3; PCTA at 27.

^{83/} Village of Buffalo Grove at 2; ALOAP at 41; D.C. Cable at 9.

^{84/} Cablevision at 16; Charter at 21; NCTA at 47.

12 MHz of bandwidth of the cable plant) but by the need to create bandwidth for scores of new digital video channels (which may occupy 200 MHz or more of an upgraded cable facility).^{85/} In many instances, these digital video services were *demande*d by the LFAs, and certainly they were also compelled by the new imperatives of competing against DBS providers (who from the outset have had all-digital platforms as well as a nationwide reach). But there is *no* additional burden on the rights-of-way that results from the allocation of a small amount of the new bandwidth to high-speed Internet service. Precisely the same cabling, electronics, enclosures, etc. that have been deployed as part of recent upgrades and rebuilds would have been required even if cable operators only wished to provide the digital video services that an advanced, high-bandwidth, digital, two-way platform makes possible.

B. Local Franchise Authorities Cannot Impose Franchise Fees on Internet Service.

State and local governments argue that they need the revenue derived from franchise fees imposed on cable Internet service to recover the costs associated with the additional burdens allegedly imposed on their rights-of-way.^{86/} It is understandable that the LFAs would like to collect all the fees they can in order to improve their respective communities. But, in the case of cable Internet services, the law simply does not permit it.

The LFAs' interests in receiving fair compensation for use of public rights-of-way are fully protected by the cable franchise. Cable operators *already* compensate the LFAs for the burdens they impose on the rights-of-way, pursuant to their local franchise

^{85/} *Donahue Decl.* ¶¶ 7, 11.

^{86/} As discussed in the prior section, there are in fact no such additional burdens.

agreements. The LFAs will continue to receive a steady stream of income from cable operators as cable subscribership increases. Furthermore, as cable operators have expanded their offerings of Title VI services (including digital video, video-on-demand, pay-per-view, and high-definition television programming – all of which are made possible by the network upgrades that some LFAs choose to complain about in this proceeding), franchise fee payments have increased substantially,^{87/} and they will likely continue to increase in the future. Thus, state and local governments’ interests in obtaining monetary compensation for the use of public rights-of-way are fully protected; if anything, they are *more* than fully protected.

Despite the LFAs’ contentions, Title VI does not provide the LFAs with an independent basis to impose additional franchise fees on cable Internet services. To the contrary, Section 622 prevents the states and LFAs from collecting fees for cable Internet service. As the statute recognizes, any fee imposed uniquely on cable operators is, by definition, a franchise fee.^{88/} Such franchise fees may be imposed only on cable services, not non-cable services, and all such fees are limited to 5% of the cable operator’s gross income derived from the provision of cable services.^{89/} In the *Declaratory Ruling*, the Commission already concluded that cable Internet service is an interstate information

^{87/} Over the past 5 years, Comcast’s franchise fee payments for cable services (cable Internet services are excluded) have increased 25% on a per-subscriber basis.

^{88/} 47 U.S.C. § 542(g)(1).

^{89/} 47 U.S.C. § 542(b) (“franchise fees . . . shall not exceed 5 percent of such cable operator’s gross revenues derived in such period from the operation of the cable system to *provide cable services*”) (emphasis added); *see also TCI Cablevision of Oakland County, Inc; Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253, CSR-4790, Memorandum Opinion and Order, 12 FCC Rcd 21396 ¶ 62 (1997)* (“[t]he scope of a local government’s franchising authority under Title VI does not extend to communications services other than cable service”), *recon. denied*, 13 FCC Rcd 16400 (1998).

service and that it is not a cable service. Therefore, it cannot be subjected to any fees that are imposed uniquely on cable operators and not applied to other Internet platforms.

Similarly, Section 622(h) does not provide the states and the LFAs with the authority to impose franchise fees on cable Internet service. Congress added subsection 622(h) to clarify that LFAs' "authority to collect a fee from the cable operator does not preclude a franchising authority from also collecting fees from persons other than cable operators who provide *cable service* over the systems to subscribers."^{90/} But this provision has nothing to do with *non-cable* services, including cable Internet service, which is an interstate information service. As AOL Time Warner explains, section 622(h) is designed to ensure that cable operators and cable programmers do not rearrange payment for services in ways that permit legitimate franchise fees to be circumvented. For example, HBO and Showtime cannot bill subscribers directly to allow cable operators to avoid franchise fees. That, of course, is a completely separate issue from the cable operator's provision of a *non-cable* service.

In a vain effort to sustain the fees formerly recovered from cable Internet services, state and local governments claim that they need these fees in order to pay for the costs of resolving consumer complaints.^{91/} As discussed below, LFAs have no basis for imposing

^{90/} H.R. Rep. No. 98-934, at 65 (emphasis added).

^{91/} MACC at 1-2 (the revenues derived from franchise fees help pay the costs of responding to subscriber complaints); City Coalition at 29 (rights-of-way fees support dispute resolution); City of Philadelphia at 7 (franchise fees enable the city to protect the legitimate interests of consumers); D.C. Cable at 3 ("local governments provide the best mechanisms for ensuring customer service and are entitled to receive just compensation . . . through franchise fees"); Metropolitan Government of Nashville at 19 ("[a]dditional monies are necessary to fund the added customer response burdens already emerging at the local level").

or enforcing customer service requirements on cable Internet providers. Therefore, there should be no costs of this kind of regulation for them to recover.

Finally, the Commission should not lose sight of where the burden of franchise fees ultimately lies. The burden of additional fees rests with the consumer, to whom these fees are invariably and permissibly passed through, and with not the cable companies. So, to the extent that any additional franchise fees are allowed to be imposed on cable Internet service, there is no doubt that the result will be to increase the costs of this service to consumers,^{92/} and inevitably to diminish demand. Slowing the growth of broadband adoption through the imposition of unjustified fees is decidedly *not* in the national interest.

C. State and Local Governments Should Not Adopt Customer Service Standards for Cable Internet Providers.

Various governmental authorities ask the Commission to approve their regulation of the “customer service” aspects of cable Internet providers.^{93/} Different governments have different notions of what kinds of regulations they would like to impose under this

^{92/} As Comcast explained in its initial comments, before the FCC issued its *Declaratory Ruling*, some local franchise authorities were imposing franchise fees on cable Internet services. Inevitably, these fees were then passed through on customers’ bills. As a result of the *Declaratory Ruling*, cable operators stopped collecting these fees on cable Internet subscribers, which directly led to lower prices for consumers. Paul Davidson, *Net Cable Service to Get a Bit Cheaper*, USA TODAY, Mar. 15, 2002 (noting that, as a result of the *Declaratory Ruling*, customers’ “[m]onthly savings would range from \$1.50 for a customer paying \$30, to \$3 for the high-end cable-modem household with a \$60 tab”); *see also* Comcast at 30 n.100.

^{93/} State of New Jersey at 2; City of Broken Arrow at 3; City of Cleveland at 2; City of Des Plaines; City of Fort Worth at 2; City of Murfreesboro at 2; City of Philadelphia at 7; City of San Antonio at 3; City of Seattle at 1; City of South Portland at 2; City of Springfield at 4; D.C. Cable at 11; County of Fairfax at 2-3; Illinois NATOA at 3; League of Oregon Cities at 2; NSCCC at 2; PCTA at 34; Richland County at 2; Upper Darby Township at 2; Vermont Public Service Board at 22; Village of Buffalo Grove at 2; WATOA at 2; ALOAP at 18, 67; City of New Orleans at 16; New Jersey Ratepayer at 1.

rubric, from preventing controls on speeds or consumption^{94/} to imposing build-out requirements.^{95/} Some would even use customer service regulation as a back-door route to imposition of multiple ISP requirements.^{96/} These proposals make no sense as a matter of policy or as a matter of law. The Commission should reject them.

State or local regulation is unnecessary and counterproductive. Because the broadband market is competitive, there is no need for various and sundry governments to impose additional requirements on cable Internet service providers. The availability of competitive alternatives – including both competing broadband providers (DSL, satellite, wireless) and existing narrowband options (primarily via plain old telephone service) – serves to discipline all market participants and ensure that they deliver quality services to their existing customers.^{97/} Cable companies are fully aware that, if they do not provide the level of customer service that consumers require, they will drive away the customers they have and diminish their ability to attract new ones in the future. This logic applies with extra force in the context of cable Internet service because the comparatively high price the service commands brings with it a correspondingly high set of consumer expectations.

^{94/} See City Coalition at 25.

^{95/} See County of Lake at 3 (requiring cable operators to provide service throughout its service area as a customer service requirement); D.C. Cable at 11-12 (imposing construction schedules and other construction related requirements on cable operators as customer service standards).

^{96/} See City Coalition at 25.

^{97/} *United States v. Syfy Enterprises*, 903 F.2d 659, 662-663 (9th Cir. 1990) (Competition “imposes an essential discipline on producers and sellers of goods to provide the consumer with a better product at a lower cost”); see also *Coblitz Decl.* ¶¶ 21-22.

Once again, this is not just sound theory but proven fact. When confronted with the sudden collapse of Excite@Home earlier this year, Comcast devoted extraordinary financial and personnel resources to the construction of its own network, within a matter of weeks, and to the successful migration of one million Comcast Internet customers from the @Home network to the new Comcast network. It did these things because customer needs, and competitive pressures, required it to do so, not because of “customer service” standards prescribed by state or local governments. Indeed, it is difficult to imagine how governmental rules might have been adopted in time to address this situation, which evolved rapidly over a very short period, and it is inconceivable that any such rules – particularly differing ones, adopted by multiple LFAs – would have improved the situation. More likely, government rules would have complicated matters, impeded Comcast’s ability to act, and diminished the speed with which a successful transition could be effectuated.

Comcast continues to devote substantial resources toward ensuring the quality of its cable Internet service and delivering a rewarding user experience. User questions regarding cable Internet service tend to involve more technical complexity than do the kinds of issues that typically arise in conjunction with cable service.^{98/} For this reason, and because Comcast understands the importance of providing a consumer experience that is consistent with the expectations of customers who are purchasing a premium service, Comcast has devoted extraordinary efforts to ensure that its customer support operations are properly staffed and that its personnel are properly trained.

^{98/} Approximately 80 percent of customer calls (or 4 out of every 5) pertaining to cable Internet service pertain to technical issues, and these are handled entirely by staff dedicated to this service.

Developing the appropriate resources begins with recruiting. Comcast, in doing its hiring, looks for people who have the requisite technical aptitude and, ideally, experience. Once hired, these individuals are required to participate in a rigorous month-long training course, which is followed by a “shadow” assistance program (where the new employees have a more experienced employee ready to help them) over an additional period of months until they are fully proficient. Comcast also has established an objective of ensuring that, whenever possible, each customer service issue is resolved within the course of a single contact with the customer.

Comcast does not do its recruiting, training, objective-setting, or staffing on an LFA-by-LFA basis. There is no practical way in which the customer service operations associated with cable Internet service could conform to multiple, diverse, local customer service standards. Indeed, the service itself cannot be provided in such a Balkanized fashion.

Although some states and LFAs argue that consumers need a forum where they can resolve customer service issues,^{99/} they never explain why it should be that *only cable* Internet service, and not the Internet services provided over telephone, satellite, and wireless facilities,^{100/} requires their involvement. There is no apparent reason why consumers need the assistance of a city council or a county cable commission to help them resolve issues with Comcast High-Speed Internet Service, but not with Earthlink or the hundreds of other Internet service providers. Nor do they explain how subjecting

^{99/} See, e.g., City Coalition at 28; New Jersey Ratepayer at 2.

^{100/} Certainly the high-speed telecommunications services provided by the telephone companies (and sometimes those offered by wireless providers) also use public rights-of-way.

cable Internet service to a patchwork of different standards, applied by multiple different decisionmakers to a single class of broadband providers (whose competitors face no such regulation), can possibly comport with the procompetitive and deregulatory goals of the 1996 Act.

Issues of customer service are first and foremost a matter of contract law. To the extent that a cable company fails to deliver the service that it has promised to deliver, the remedy lies in the terms of the contract. If cable companies offer unsatisfactory contract terms, that too will be swiftly remedied by marketplace forces; the “assistance” of the LFAs is not required. To the extent that any additional forum is needed for customer service issues, the logical candidate is the Federal Trade Commission, which already reviews customer service issues pertaining to Internet services and whose jurisdiction does not hinge on whether the Internet service is delivered via cable, telephone, wireless, or satellite facilities.^{101/} The Balkanized approach, by contrast, would inevitably lead to increased costs and expenses for cable operators and, ultimately, will result in higher rates for consumers.

To allow state and local regulation of cable Internet services would be inconsistent both with prior Commission rulings and with express statutory directives. As discussed above, the *Declaratory Ruling* rightly decided that cable Internet services are interstate information services. In *Computer II*, the Commission preempted state and

^{101/} Consumers can readily file customer complaints regarding the Internet service they receive through the Federal Trade Commission’s web site. See FTC Consumer Complaint Form, at <https://rn.ftc.gov/ftc/consumer.htm> (visited July 17, 2002).

local regulation of information services,^{102/} and those services have been unregulated ever since.^{103/} Section 624(b)(1) of the Communications Act directs the LFAs not to establish requirements for information services. Section 230(b)(2) of the Communications Act establishes a notional policy of “preserv[ing] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*”^{104/} And Section 706 of the Telecommunications Act directs the FCC and the state commissions to “encourage the deployment on a reasonable and timely basis of [broadband services] to all Americans” and stresses that, if at any time this goal is not being achieved, the FCC must take immediate action, including “removing barriers to infrastructure investment and by promoting competition.”^{105/}

All of these prior rulings and statutory provisions would be violated by granting state and local governments the authority to regulate cable Internet service. Whatever the precise contours of the authority created or preserved by Section 632, that provision clearly cannot trump all the prior and subsequent guidance – from the Commission and from the Congress – regarding the treatment of information services. Accordingly, the states and LFAs may not extend “customer service” standards (including forced access requirements) to cable Internet providers.

^{102/} *Computer II Further Recon. Order* ¶ 83 n.34; see also *Third Computer Inquiry* ¶ 343.

^{103/} The Commission has read the 1996 Act as a ratification of its distinction between “basic” and “enhanced” services and of its decision to leave the latter (now known as information services) unregulated. *Stevens Report* ¶ 33.

^{104/} 47 U.S.C. § 230(b)(2).

^{105/} *Telecommunications Act of 1996*, Pub.L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 (1996).

Despite all this, two parties assert that the Commission has delegated authority to the state and local franchise authorities to resolve customer service issues. They cite a recent letter sent by Dane Snowden, the chief of the FCC's Consumer & Government Affairs Bureau, to Kenneth Fellman, the Chairman of the Local and State Government Advisory Committee, as proof that state and local governments have the authority to address customer service complaints.^{106/} This reflects a misunderstanding both of the structure of the Commission and of the limits on delegated authority. Mr. Snowden's letter did not – and could not – confer any authority on the states or the localities. His Bureau's role is not to establish binding FCC policies but to communicate information “with the general public regarding Commission policies, programs, and activities.”^{107/} Moreover, the Commission has expressly reserved to itself the disposition of “novel questions of law, fact or policy.”^{108/} Clearly, the Consumer and Governmental Affairs Bureau has no authority to award LFAs power that they do not otherwise have.

**D. Privacy Interests Should Be Secured By a Uniform Regime
Applicable to All Online Services.**

The record reveals that some state and local governments are already imposing privacy requirements on cable Internet providers.^{109/} All Internet services – whether provided by cable companies, telephone companies, or ISPs who lack their own facilities – should be regulated under a uniform privacy regime. The Internet is a global medium and for that reason a patchwork of inconsistent privacy requirements from area to area

^{106/} See ALOAP at 17 n.25; Mount Hood at 4 n.8.

^{107/} 47 C.F.R. § 0.141.

^{108/} 47 C.F.R. § 0.361(c).

^{109/} City of Seattle at 3 (the City of Seattle recently enacted privacy requirements for cable Internet service); WATOA at 1-2.

will not work. A uniform framework would harmonize consumers' rights and would create consistent procedures and forums designed to resolve Internet privacy matters.^{110/} As Comcast points out in its initial comments, even in the absence of any such legislation, Comcast is committed to protecting its customers' privacy interests.^{111/}

E. LFAs Have No Basis to Require that Cable Internet Providers Comply with "PEG" Requirements.

A few parties argue that the Commission should provide for the PEG needs of cable Internet subscribers.^{112/} These parties ignore the fundamental differences between video programming services and cable Internet service offerings. Congress imposed PEG access requirements on *cable* services to ensure that government and educational programming are delivered to video subscribers.^{113/} As the Commission has already recognized, cable Internet services are *interstate information services*. PEG access requirements simply do not apply to cable Internet services.

PEG access requirements as applied to cable Internet services not only fail as a matter of law, but also fail as a matter of policy. There is not the slightest danger that public, educational, or governmental interests can or will be shortchanged in the Internet. The World Wide Web makes more information available to more people about more questions of public import than has ever existed.^{114/} Further, no one can deny that in

^{110/} For a more detailed discussion of this point, see Comcast's initial comments filed in this proceeding, at 33-35.

^{111/} *Id.* at 34 n.108.

^{112/} Metropolitan Government of Nashville at 20; Mount Hood at 16.

^{113/} See 47 U.S.C § 531. PEG access requirements also provide "third-party access to cable systems [and provide] a wide diversity of information sources for the public." H.R. Rep. No. 98-934, at 30 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655 (1984).

^{114/} See, e.g., *Reno v. ACLU*, 521 U.S. 844, 852 (1997) ("at any given time tens of thousands of users are engaging in conversations on a huge range of subjects. It is no

terms of access to news, information, opinions, and opportunities for robust debate on literally any issue of interest, the Internet has already eclipsed anything that was ever available from a single or multi-channel video program distributor. And, as explained above, all Internet content is available to cable Internet users; unlike a package of video programming channels, the Internet does not reflect the editorial choices of a cable operator. In such a setting, the notion of “PEG access requirements” is pointless.

exaggeration to conclude that the content on the Internet is as diverse as human thought”) (internal citation omitted).

IV. CONCLUSION

For the reasons stated in its initial comments and those stated above, and consistent with the views of numerous commenters, Comcast respectfully requests that the Commission maintain its hands-off approach to cable Internet service. No new federal requirements should be imposed, and the Commission should prevent state and local governments from burdening this competitive service with unauthorized requirements and unjustified fees.

Respectfully submitted,

Joseph W. Waz, Jr.
COMCAST CORPORATION

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August 6, 2002

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of Comcast Corporation was served, by the noted methods, the 6th date of August 2002, on the following:

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/s/ Susan S. Ferrel
Susan S. Ferrel

ATTACHMENT A

List of Parties Cited in Comcast’s Reply Comments CC Docket No. 02-52

Full Name of Commenting Party Cited	Shorthand Used in Reply Comments
Alliance of Local Organizations Against Preemption (“ALOAP”)	ALOAP
Alamance County, North Carolina	Alamance County
Amazon.com	Amazon
American Cable Association	ACA
American Civil Liberties Union	ACLU
AOL Time Warner Inc.	AOLTW
Arizona Cable Telecommunications Association, Insight Communications Corporation, and MediaCom Communications Corporation	ACT
AT&T Corp.	AT&T
Attorney General of Texas	Texas AG
BellSouth Corporation	BellSouth
Cablevision Systems Corporation	Cablevision
Caswell County, North Carolina	Caswell County
Center for Digital Democracy, Consumer Federation of America, Media Access Project, Association of Independent Video Filmmakers, National Alliance of Media Arts and Culture, the United Church of Christ, Office of Communication, Inc.	CDD
Charter Communications, Inc	Charter
City of Archidale, North Carolina	City of Archidale
City of Asheboro, North Carolina	City of Asheboro
City of Broken Arrow, Oklahoma	City of Broken Arrow
City of Burlington, North Carolina	City of Burlington
City of Cleveland, Ohio	City of Cleveland
City of Concord, California	City of Concord
City of County Lake, Illinois	County Lake
City of Des Plaines, Illinois	City of Des Plaines
City of Eden, North Carolina	City of Eden
City of Fort Worth, Texas	City of Fort Worth
City of Graham, North Carolina	City of Graham
City of High Point, North Carolina	City of High Point
City of Lexington, North Carolina	City of Lexington
City of Mebane, North Carolina	City of Mebane
City of Murfreesboro, Tennessee	City of Murfreesboro, Tennessee

Full Name of Commenting Party Cited	Shorthand Used in Reply Comments
City of New York, New York	City of New York
City of Pelham, Alabama	City of Pelham, Alabama
City of Philadelphia, Pennsylvania	City of Philadelphia
City of Randelman, North Carolina	City of Randelman
City of Reidsville, North Carolina	City of Reidsville
City of San Antonio, Texas	City of San Antonio
City of San Diego, California	City of San Diego
City of Seattle, Washington	City of Seattle
City of South Portland, Maine	City of Portland, Maine
City of Springfield, Missouri	City of Springfield
Comcast Corporation	Comcast
Comments of the City Coalition	City Coalition
County of Lake, Illinois	County of Lake
Cox Communications, Inc.	Cox
Davidson County, North Carolina	Davidson County
District of Columbia Office of Cable Television & Telecommunications	D.C. Cable
Earth Link, Inc.	Earthlink
Fairfax County, Virginia and District of Columbia Office of Cable Television and Telecommunications	Fairfax County
Guilford County, North Carolina	Guilford County
High Tech Broadband Coalition	HTBC
King County, Washington	King County, Washington
League of Oregon Cities	League of Oregon Cities
The Media Institute	Media Institute
Metropolitan Area Communications Commission	MACC
Metropolitan Government of Nashville, Tennessee	Metropolitan Government of Nashville
Motorola, Inc.	Motorola
Mt. Hood Cable Regulatory Commission et al.	Mount Hood
National Cable & Telecommunications Association	NCTA
National Association of Telecommunications Officers and Advisors, Illinois Chapter	Illinois NATOA
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer
Northwest Suburbs of Cable Communications Commission	NSCCC

Full Name of Commenting Party Cited	Shorthand Used in Reply Comments
People of the State of California and the California Public Utilities Commission	People of California
Public Cable Television Authority	PCTA
Richland County, South Carolina	Richland County
Randolph County, North Carolina	Randolph County
Rockingham County, North Carolina	Rockingham County
SBC Communications, Inc.	SBC
State of New Jersey Board of Public Utilities	State of New Jersey
Town of Boone, North Carolina	Town of Boone
Town of Elon, North Carolina	Town of Elon
Town of Gibson, North Carolina	Town of Gibson
Town of Haw River, North Carolina	Town of Haw River
Town of Jamestown, North Carolina	Town of Jamestown
Town of Liberty, North Carolina	Town of Liberty
Town of Madison, North Carolina	Town of Madison
Town of Mayodan, North Carolina	Town of Mayodan
Town of Oak Ridge, North Carolina	Town of Oak Ridge
Town of Ramseur, North Carolina	Town of Ramseur
Town of Yanceyville, North Carolina	Town of Yanceyville
United States Telecom Association	USTA
Upper Darby Township Telecommunications Commission	Upper Darby Township
Utility, Cable & Telecommunications Committee of the City Council of New Orleans	City of New Orleans
Verizon	Verizon
Vermont Public Service Board	Vermont Public Service Board
Village of Buffalo Grove, Illinois	Village of Buffalo Grove
Washington Association of Telecommunications Officers and Advisors (WATOA)	WATOA

ATTACHMENT B

DECLARATION OF JOHN DONAHUE

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

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

**DECLARATION OF JOHN DONAHUE IN SUPPORT OF THE REPLY
COMMENTS OF COMCAST CORPORATION**

I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

1. My name is John Donahue and I am Senior Vice President of Engineering Operations at Comcast Cable Communications, Inc. ("Comcast"). I have been with Comcast since 1986 and have been an officer with Comcast since 1990. My responsibilities at Comcast include providing all the engineering guidance for the day-to-day operations of all Comcast systems, including all network upgrades and the field fulfillment of Comcast's high-speed data services.

2. I submit this declaration in support of the Reply Comments of Comcast Corporation submitted in the above-captioned proceeding. I am fully competent to testify to the facts set forth herein.

II. CABLE INTERNET SERVICE AND PUBLIC RIGHTS-OF-WAY

3. I understand that several local franchising authorities ("LFAs") or their representatives have suggested that cable Internet service places significant burdens on the public rights-of-way. Specifically, they claim that a cable operator's decision to provide high-speed

Internet service necessitates the use of larger pedestals, boxes, and encasements; larger hub sites; additional nodes and more fiber; and the installation of new electronics. These claims are erroneous.

4. It is indeed true that cable operators have made considerable investments in their networks to improve them. Comcast alone has spent \$5 billion over the past six years to upgrade and, where necessary, rebuild the cable systems that it owns. But it is not the case that it is the provision of cable Internet service that requires these upgrades and rebuilds.

5. Competition from other video service providers has made it untenable for a cable company to offer its customers only a few dozen analog channels of video programming. In every community we serve, customers have the opportunity to purchase multichannel video services from two DBS companies, both of which have all-digital platforms and a nationwide reach. They offer hundreds, not dozens, of channels. So, in many communities, do overbuilders.

6. As a result, Comcast has necessarily sought to remain competitive by upgrading the older plant to expand bandwidth, enable digital transmissions, and permit two-way communications. In many communities, the strong competitive imperative to make these investments is supplemented by explicit LFA requirements, usually imposed in conjunction with a franchise renewal, to do so. As a result, most communities that previously were served by cable systems with only 330 to 450 MHz of bandwidth are now enjoying the benefits of a plant that has a capacity of 550, 750, or even 860 MHz of bandwidth. Comcast has now upgraded more than 95% of its plant to 550 MHz or better and over 80% to 750 MHz or better.

7. The most immediate consequence of this increase in bandwidth, and the main driver of the investment, is the opportunity to vastly increase the number of channels of video programming that can be offered. *Digital video* is the service that cable most needed to be able

to offer to compete with DBS and others, and Comcast can now offer over 200 channels where previously it could only offer 50 or 60. Digital video services have received a warm welcome from consumers, who are signing up in droves. Digital video services also mean more cable service revenues for Comcast, and more franchise fee payments to the LFAs.

8. Comcast is working hard to build demand for digital video services. One new functionality that is now being rolled out is video-on-demand ("VOD"). Early indications are that this additional functionality makes digital video services even more attractive to consumers. VOD could not be offered without the two-way capability that has been added to the cable systems in the course of upgrades and rebuilds.

9. The upgrades will also enable Comcast to offer a variety of additional services. Some of these future services may be classified as cable services; others may not. The full potential of the broadband platform remains to be explored.

10. I am aware of no way in which our use of public rights-of-way is increased solely as a result of our decision to provide cable Internet services. To put it another way, the very same changes we have made in terms of cabling, electronics, enclosures, etc. would have been made if we had sought to create the capability to offer the full menu of services we are currently providing, and hoping to provide in the future, but *without* high-speed cable Internet.

11. It is important to understand that cable Internet service occupies only 12 MHz of bandwidth (6 MHz forward and 6 MHz return), so the vast expansion of bandwidth in which we have invested would never have been needed to support the introduction of cable Internet service alone. Likewise overlooked in some of the LFA comments is the fact that many, if not all LFAs, required the installation of two-way capable amplifiers *before* there was any commercial prospect of high-speed cable Internet service.

12. As noted, Comcast has not installed larger pedestals, boxes, and encasements to enable the provision of cable Internet or any other single service; where such things are needed, it is to support digital video, VOD, and *multiple* other present and anticipated future services (including cable Internet). In those cases where larger enclosures were needed, they tend to be located in public easements but not on public property. They do not typically require street cuts. Comcast makes every attempt to work with home owners to find suitable locations for such enclosures, and in many situations we have improved the appearance of these enclosures through appropriate landscaping, often without any such requirement imposed by franchise agreements.

13. By and large, our upgrades have not required street cuts. We reuse existing cable whenever possible. Only approximately 25% of cable, by route mileage, requires replacement, and only 30% of this is located below ground. Thus, less than 10% of cable replacement leads to street cuts. Again, those cuts would be required whether or not we provide high-speed Internet service. All street cuts (timing, marking, restoration speed and quality, etc.) are coordinated with appropriate government authorities under the terms of our existing franchises.

14. Cable operators pay substantial franchise fees to LFAs to account for the burdens imposed on public rights-of-way. Those fees are capped at 5% of revenues attributable to cable services. Even though some of the services we offer now and in the future will not be subject to franchise fees, because they are not cable services, the aggregate franchise fee payments we are making to LFAs have risen significantly, and are likely to continue to rise, as more consumers find value in additional cable services that we provide.

III. BANDWIDTH MANAGEMENT TOOLS

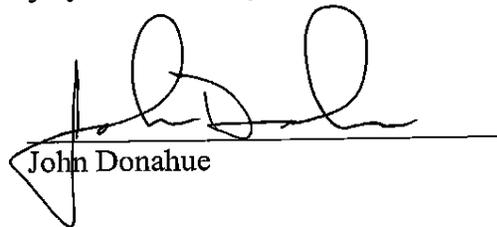
15. Comcast's cable Internet Service, Comcast High-Speed Internet Service, was designed as a residential service, and it is not intended for commercial purposes. Because cable Internet service uses shared channels that serve multiple homes, heavy usage by one customer can affect the bandwidth available to other users. This creates a need to manage the bandwidth so as to deliver to all customers the quality of service that they reasonably expect. At the same time, we have not designed the standard service to meet the higher performance expectations and greater bandwidth consumption that inevitably result from commercial operations. It is for these reasons that we have established specified bit rates and various usage restrictions that are set forth in our terms of service and acceptable use policy. Other high-speed Internet services, including DSL, are offered with similar constraints.

16. Recognizing the desire of a small subset of users for ever greater speeds and higher quality, Comcast is moving to develop and deploy different tiers of Internet service. In a number of markets, we already offer Comcast Pro, which is designed for use in the customer's home office and addresses the need for greater speeds. In addition, those users who wish to operate web-hosting or other highly bandwidth-intensive operations can arrange service through Comcast Business Communications, which is designed to accommodate the needs of small and large businesses. I would expect that future offerings would provide new services with increased features, different usage policies, and different terms of service.

17. Comcast does not prohibit its customers from purchasing or attaching their own equipment to Comcast High Speed Internet's network. That equipment, however, must be compatible with Comcast's network. Compliance with DOCSIS standards does not, in and of itself, ensure such compatibility; at a minimum, the configuration file loaded onto the cable

modem must also be compatible with the provisioning system used by Comcast. Comcast works cooperatively with manufacturers to enable them to design their equipment so that such compatibility can be achieved.

I, John Donahue, declare under penalty of perjury that the foregoing declaration is true and correct. Executed on August 6th, 2002.



John Donahue