

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



Notice of Proposed Rulemaking **DOCKET FILE COPY ORIGINAL**

Appropriate Regulatory Treatment for
Broadband Access to the Internet Over
Cable Facilities

CS Docket No. 02-52

REPLY COMMENTS OF THE CITY OF DUNCANVILLE, TEXAS

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

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

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

The City of Duncanville is a city of 36,081. It is served by Charter Communications, A Wired World Company, and has approximately 5,361 subscribers within the City of Duncanville. The cable system serving our community offers subscribers approximately 82 channels. Cable modem service is offered in our community.

2. Our franchise and cable modem service.

Our franchise was granted in 1999 and required the cable operator to provide cable modem service throughout the community.

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Section 2.6.1 By December 1, 2000 company shall have Internet service available to all current or potential subscribers. "Internet service" shall mean high speed access to an Internet service provider via a cable modem.

Additionally, the Franchise generally provides that internet services are a "cable service" and that such services are provided in connection with Charter's cable system.

Section 1.6 Cable Services means:

...

1.6.2 Subscriber interaction, if any, including but not limited to that which is used for the selection or use of such Video Programming or other programming services, selecting from various on-screen options, use of Enhanced, Advanced Cable Services, game channels, interactive services, downloading programs or data access, or ordering merchandise, and...

Section 1.11 Enhanced, Advanced Cable Services means:

enhanced services, information services, Internet protocol (IP) telephony, high speed data service, Internet access and Internet services (such as that of an Internet service provider).

We received \$2,408 in cable modem franchise fees for the first quarter of 2002. These payments were made in consideration of the granting of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms.

7.1 Franchise Fee. Company shall pay Municipality throughout the term of this Franchise an amount equal to five percent (5%) of Company's Cable Gross Revenues. Such payments shall be made quarterly, and are due within forty-five (45) days after the end of each calendar quarter.

1.5 Cable Gross Revenues or Gross Revenues shall mean all of the amounts earned by Company, or an entity in any way Affiliated with the Company, in whatever form and from all sources which are in connection with or attributable to the operation of the Cable Television System within Municipality's municipal boundaries or Company's provision of Cable Services with Municipality's municipal boundaries.

1.5.1 **Cable Gross Revenues** shall include without limitation all subscriber and customer revenues earned, net of bad debts, including revenues for basic cable services; additional tiers; premium services; pay per view; program guides; installation, disconnection or service call fees; fees for the provision, sale, rental, or lease of converters, remote controls, additional outlets and other customer

premises equipment; franchise fees paid by subscribers; revenues from the use of leased access channels; cable modem service, high speed data service, Internet access, and Internet service (such as that of an Internet service provider); advertising revenues from the System; and revenues and compensation from home shopping programming.

Further, **Section 12.1 of Exhibit E** of the Agreement provides:

To remove any uncertainty on Company' authority to provide Enhanced, Advanced Cable Services the parties agree that Company has the authority to provide Enhanced, Advanced Cable Services under the Franchise and that the revenues therefrom shall be included in gross revenues for the purpose of computing and paying cable franchise fees.

We estimate that we will lose in excess of \$93,932.00 over the term of the agreement (through 2011) if we cannot charge a fee on revenues from cable modem service.

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

3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by our cable operator. These include complaints about traditional video programming services and about cable modem services. Responding to these complaints requires significant staff time and effort.

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

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, therefore telephone answering policies affect both.

- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

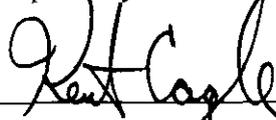
As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded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

4. Our community and broadband development.

Our community believes it is very important to encourage broadband deployment and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

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

Respectfully submitted,



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