

FCC's Cable Modem NPRM

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Program Outline

- What FCC's order says.
- What's at stake
- Proposed Regulatory Response
- Ideas on how to respond to Cable Modem Fee Letter



What the FCC Says

- Cable modem is an “interstate information service.”
- Cable modem is not a telecommunications service.
- Cable modem is not a cable service.



What the Commission Tentatively Concludes

- Cable operators providing cable modem service need not offer their networks to competing Internet Service Providers.
- Cable operators are empowered under their existing cable franchise to access the public rights-of-way to upgrade their cable systems to provide cable modem service.



What the Commission Tentatively Concludes

- Local government cannot require a franchised cable operator to obtain a second cable franchise, nor any form of permission, to provide cable modem service.
- Local government is not entitled to a franchise fee for the gross receipts generated by cable modem service.



What the Commission Tentatively Concludes

- It will be up to the courts to determine if local governments are required to provide a rebate for fees already collected.
- Local government can not require as a condition of granting or renewing a franchise that the cable operator offers cable modem services.



What's at Stake?

- Local governments' ability to:
 - protect cable consumers;
 - manage the use of the public's rights-of-way;
and
 - receive fair and reasonable compensation for
use of this special public asset.



What's at Stake?

- Cable is leading provider of hi-speed internet
- currently \$40-50/month
- last 12 months: 12-33% increase in rates
- SBC & Verizon DSL rates up 25%



What's at Stake?

- \$30 billion franchise fees over the next ten years.
- Unregulated monopoly power over high speed access to Internet.
- An era where the monopolist exercises superior market power to that of any individual local government.



What Needs to be done

- Local government must
 - Prosecute an integrated multiple fronts campaign.
 - Sharpen its objectives in each of these venues.
 - Local government must be prepared to ask and answer what it expects to achieve from any appeal to the Federal courts, from comments and actions taken at the FCC, and from the enlistment of Congressional help.



LOCAL GOVERNMENTS' RESPONSES

- Litigation
- Regulatory Advocacy
- Legislation
- Public Opinion



FCC Activity

- Local government must:
 - File “robust” Comments and Reply Comments
 - Engage in an aggressive “*ex parte*” program of senior government officials
- Comments due June 17
- Replies due July 16



Robust Filing

- Local Government must:
 - Address the legal questions posed by the NRPM.
 - Introduce a meaningful treatise on property law rights in the right of way
 - Including quantitative studies and empirical evidence to demonstrate:
 - Commission's belief that CM and DSL will compete in naïve.
 - The drastic impact on local governments' operations the loss of these fees will have.



Aggressive Ex Partes

- Local Elected Officials and National Association Officers must make the FCC a priority stop.
- Must ask the hard questions: “Do you understand how this item harms local government and its constituents?”
- Make clear that local government will fight this result.
- Expand universe of advocates (i.e. APWA)



Halt Payment Letters

- A number of LFAs have received letters stating the companies must under the FCC ruling stop collecting franchise fees.
- MVE believes that you have a response, but response must be consistent with state law.



Response Letter

- Local government retains the full rights of property ownership:
 - to control the use of its public rights-of-way
 - to charge rent for that use in accordance with Section 253 of the Communications Act.
- The FCC Ruling does not automatically authorize a cable operator to “piggyback” on a cable franchise to obtain unlimited use of public rights-of-way.



Response Letter

- Depending upon the language of a community's franchise documents, there may also be contractual arguments that a cable operator continues to owe the community compensation.
- Review your state's laws regarding recovery of rents for use of public rights-of-way (as well as other state laws that may have unintended effects on local governments' rights, such as state bans on taxation of Internet service).



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