

Recent Federal Communications Commission Decision

William R. Hanna, Esq.

Ohio communities may soon begin receiving telephone calls and complaints from residents who notice an increase in their cable bills, thanks to an October, 2001 decision of the Federal Communications Commission (FCC). In response to requests for declaratory rulings by the cities of Pasadena, CA, Nashville, TN, and Virginia Beach, VA, the FCC in October issued a decision that strongly favors cable operators at the expense of cable television consumers and local governments. The key provisions of the decision are:

- Cable operators may legally pass through to subscribers the entire amount of the franchise fee they pay to a local franchising authority, including franchise fees that the operator pays on non-subscriber related revenues such as advertising revenue and homeshopping commissions.
- Cable operators can itemize the entire franchise fee on the subscriber bill – including fees paid on non-subscriber related revenue. This means, for example, that in a community where 5% of gross revenues are paid as franchise fees, a subscriber could see a franchise fee line item on the cable bill that exceeds 5% of the amount billed for cable services.

**the FCC in October
issued a decision
that
strongly favors
cable operators at
the expense of cable
television
consumers and
local governments**

- A cable operator can begin passing through fees paid on non-subscriber related revenue at any time, whether or not it has ever done so in the past. Therefore, subscribers may see increases in their total cable bills without notice. In fact, the FCC decision even leaves open the possibility that the cable company could begin to pass through franchise fees paid on non-subscriber related revenue in the past.
- Finally, the ruling could theoretically allow cable companies to spread out franchise fees they may pay on cable modem revenues across all cable subscribers, rather than passing them through only to cable modem subscribers, giving cable companies a pricing advantage versus providers of high speed telephone internet

access such as DSL technology, which would have an anti-competitive, anti-consumer effect over the long term.

This decision is decidedly pro-cable industry, anti-consumer, and anti-local government. The reasoning stated by the FCC for its decision is that if local governments want to insist that cable operators pay franchise fees on revenues resulting from advertising and home-shopping commissions, they should be politically accountable to subscribers for doing so. This rationale seemingly ignores the high degree of political accountability which local government, more than any other level of government, bears with respect to its residents.

In November, 2001, the FCC's decision was appealed to the Federal Court of Appeals for the Fifth Circuit by the Texas Coalition of Cities for Utility Issues. A group of Ohio cities, villages and townships with the support of the Ohio Municipal League and the Ohio Municipal Attorneys Association are filing an amicus brief in the Fifth Circuit case in support of the local government perspective.

William R. Hanna is an attorney with Walter & Haverfield, 1300 Terminal Tower, in Cleveland.