



## Local Government Groups Express Disappointment Over Cable Modem Ruling Ruling Could Create Serious Financial Hardships for Nation's Communities

Washington, DC, December 8, 2004 ----- Local government leaders today expressed their disappointment at the recent decision by the U.S. Supreme Court that will affect their ability to raise revenues through cable franchise fees. At issue is a recent Appeals Court decision that, in essence, determined that cable modem service is not subject to cable franchise fees. Currently these fees generate as much as \$470 million in revenues a year and support public safety programs such as emergency response, police and fire among other city services.

Although the Court accepted for review the positions of the Solicitor General/Federal Communications Commission and the National Cable and Telecommunications Association, it refused to hear the arguments of local governments in this case.

The **National League of Cities**, the **United States Conference of Mayors**, the **National Association of Counties**, the **International Municipal Lawyers Association**, and the **National Association of Telecommunications Officers and Advisors** formed the Alliance of Local Organizations Against Preemption to pursue legal and regulatory actions in the case that has come to be known as the "Brand X" case. In October 2004, the group filed a petition for the Court's review, contending that the FCC action deprives local governments of their right to require cable operators to pay adequately for their use of public property for private gain.

Tom Cochran, Executive Director of the United States Conference of Mayors said, "I am deeply troubled with the Court's refusal to listen to local government and allow cable modem or broadband to have the same social, public safety and fiscal obligations as cable television. The full fiscal impact is enormous." Cochran went on to say, "Many cities use cable franchise fees to fund critical public services that make communities safer and more livable, from homeland security and general police and fire protection, to high quality education programs closing the Digital Divide."

"I truly regret that the Court has not given local governments an opportunity to present their position in this profoundly significant case," said Donald J. Borut, Executive Director for the National League of Cities. "We had hoped that the position of local governments—those on the front lines of providing services to our communities—would be heard by the Court. Our position has been clear—it's a cable service and we have statutory approval over this service."

Libby Beaty, Executive Director of NATOA and a member of the Alliance, said, "Of course we are terribly concerned with the denial by the Court. It means that the classification of cable modem service may be determined without any meaningful judicial review. And, it leaves local governments having to accept and contend with whatever determination is made by the Court, regardless of the detrimental impact such decision may have."

Larry E. Naake, Executive Director of the National Association of Counties (NACo), echoed these sentiments. “NACo is deeply disappointed with the Supreme Court’s decision. Local governments stand to lose more than \$470 million in franchise fees and will have to make up for these shortfalls by looking at other ways to raise revenue.”

The Federal Communications Commission originally determined that cable modem service offered over a cable system is an interstate information service—not a cable service or a telecommunications (telephone) service. As a result, it would not be subject to local cable franchise requirements. In October 2003, the U.S. Court of Appeals for the Ninth Circuit ruled that cable modem service has components of both telecommunications and information services but that it is not a cable service. The FCC as well as the National Cable and Telecommunications Association are seeking a Supreme Court review of the Appeals Court decision. The Alliance was formed to present the local government view in the case.

Borut said that given the potentially significant revenue loss, “communities across this country will closely watch the proceedings of this case before the Supreme Court. The end result is going to affect every broadband subscriber in this country,” Borut said.

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