



Local Government Groups File Brief Before the Ninth Circuit Court of Appeals Challenging FCC's Cable Modem Ruling

Washington, DC, October 10, 2002 ----- A coalition of local government organizations filed a brief before the court challenging the Federal Communication Commission's interpretation of the Communications Act and its finding that cable modem service is outside the scope of Title VI of the Act. At stake in the appeal is an estimated \$300 million per year in cable franchise fees, a figure that is likely to mushroom in the years ahead, and a loss that local governments cannot afford in light of the current economy and the increasing costs being incurred for homeland security.

The National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the International Municipal Lawyers Association and the National Association of Telecommunications Officers and Advisors announced in May the creation of the coalition referred to as the Alliance of Local Government Officials Against Preemption (ALOAP). The coalition has previously filed comments before the FCC in the proceeding addressing cable modem issues. Today, four of the associations jointly filed an initial brief before the Court of Appeals for the Ninth Circuit challenging the FCC's findings in its March 15, 2002 Declaratory Ruling. The International Municipal Lawyers Association joins the group as an Intervenor by a separate filing to be made in the coming weeks.

ALOAP's brief, filed with the court today, argues that cable modem service is a 'cable service' within the meaning of the federal Communications Act, and that the FCC was wrong in concluding otherwise in its March 2002 Declaratory Ruling. ALOAP pointed out that the only way that the plain language of the Communications Act, the legislative history of the 'cable service' definition, the 1998 Internet Tax Freedom Act, and other FCC decisions can be read together in a coherent, consistent manner is to classify cable modem service as a 'cable service.' The FCC's Declaratory Ruling, in contrast, improperly seeks to rewrite the law to elevate the policy preferences of an unelected FCC over those of Congress as expressed in the Communications Act.

Copies of the brief are available upon request.

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