

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
NCTA Request for Clarification of Franchise Fee	)	CSR-5147-R
Policy	)	
	)	
	)	

**ORDER**

**Adopted: March 12, 2007**

**Released: March 13, 2007**

By the Chief, Media Bureau:

1. In a Petition filed April 1, 1998, the National League of Cities; National Association of Telecommunications Officers and Advisors; the Cities of Ann Arbor, Michigan; Indianapolis, Indiana; Laredo Texas; St. Louis, Missouri; and Tallahassee, Florida; Hillsborough County, Florida; and the Southwestern Oakland County Cable Commission (“Petitioners”) sought clarification and reconsideration of an order<sup>1</sup> issued by the Cable Services Bureau on March 2, 1998 in which the Bureau ruled that cable operators may pass through to their subscribers any franchise fee charges requested of cable operators by their local franchising authorities as a result of the recalculation of franchise fees pursuant to the Fifth Circuit Court of Appeals’ decision in *Dallas v. FCC* (“*Dallas*”).<sup>2</sup> In this Order, we dismiss the Petition on the grounds that the requested reconsideration is beyond the scope of the Bureau order.

2. We note that the recalculation of franchise fees pursuant to *Dallas* was a one-time event that occurred nine years ago. The Petition was submitted following the ruling of the Bureau on a previous petition filed by the National Cable Television Association (“NCTA”) regarding the appropriate regulatory treatment of local franchise fee payments as a result of the *Dallas* decision, which reversed the Commission’s decision in *United Cable Artists*.<sup>3</sup> In its petition, NCTA requested clarification of whether cable operators that relied on *United Cable Artists* and excluded franchise fee payments from the gross revenues pool upon which their franchise fees were calculated, may pass through to subscribers increases in their franchise fee payments that they were required to make to compensate for previous underpayments pursuant to the 5<sup>th</sup> Circuit’s ruling in *Dallas*.<sup>4</sup> The Bureau ruled that cable operators may do so.

3. Petitioners seek clarification regarding what it means to “properly follow” *United Cable Artists*. The Bureau, in its ordering clause, limited application of the order to cable operators that “properly followed” *United Cable Artists* by calculating lower franchise fees pursuant to that Commission decision. Petitioners also seek clarification that franchise authorities can require, not simply request,

<sup>1</sup> *In re Franchise Fee “Pass Through” and Dallas v FCC*, 13 FCC Rcd 4566 (1998).

<sup>2</sup> *Dallas v. FCC*, 118 F.3d 393 (5th Cir. 1997) reversing *United Artists Cable*, 11 FCC Rcd 18158 (1995).

<sup>3</sup> *United Cable Artists*, 11 FCC Rcd 18158.

<sup>4</sup> See 47 U.S.C. § 542 (“franchise fees paid by a cable operator ... shall not exceed 5 percent of such cable operator’s gross revenues derived ... from the operation of the cable system.”).

cable operators to pay the difference in franchise fees resulting from the higher calculations. Finally, Petitioners seek reconsideration of the Bureau's determination that cable operators can recover from subscribers the difference in franchise fees, arguing that the Bureau order conflicts with *Dallas*.

4. The Bureau order fully addressed the issue raised by NCTA in its petition. NCTA requested clarification on whether cable operators that relied on *United Cable Artists* may pass through charges subsequently paid to franchise authorities pursuant to *Dallas*. The Bureau order concluded they could. In doing so, the Bureau order did not discuss the details of that calculation or other alleged "pass throughs," and concluded merely that operators that followed the dictates of *United Cable Artists* may pass through subsequently the changes in franchise fee charges resulting from recalculations pursuant to *Dallas*. With respect to whether franchise authorities may require or merely request cable operators to pay the difference, the Bureau order restated the issue raised by NCTA as whether cable operators may pass through payments they were *required* to make for underpayments made during the period *United Cable Artists* was in effect. The Bureau concluded that they may do so. Finally, the Bureau order in no way was inconsistent with *Dallas*, which did not address recovery of franchise fees by cable operators as raised in the NCTA petition.

5. Accordingly, **IT IS ORDERED** that the Petition for Clarification and Reconsideration of National League of Cities; National Association of Telecommunications Officers and Advisors; the Cities of Ann Arbor, Michigan; Indianapolis, Indiana; Laredo, Texas; St. Louis, Missouri; and Tallahassee, Florida; Hillsborough County, Florida; and the Southwestern Oakland County Cable Commission **IS DISMISSED**.

6. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules.<sup>5</sup>

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau

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<sup>5</sup> 47 C.F.R. § 0.283.