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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 79702-1

COMMUNITY TELECABLE OF SEATTLE, INC.,
COMCAST OF WASHINGTON I, INC., AND
COMCAST OF WASHINGTON IV, INC.,

Petitioners,

v.

CITY OF SEATTLE,

Respondent.

Petitioners' Statement of Additional Authorities

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With respect to the material on pages 19-20 of the Petition for Review, Petitioners (“Comcast”) refer the Court to the following additional authority:

Qwest v. City of Bellevue, No. 79909-1, 2007 WL 2446902, at *3, 4, 8, Slip. Op. 9, 11-12, 19 (Wa. Supreme Ct. Aug. 30, 2007) (“[W]hether charges are charges for access to interstate (as opposed to intrastate) service is a question of law Subsequent to the parties’ initial briefs, however, the Court of Appeals interpreted RCW 35.21.714 (a statute substantively identical to RCW 35A.82.060)¹² as precluding tax on charges for interstate services *only when those charges are to another telecommunications company. See Cmty. Telecable of Seattle, Inc. v. City of Seattle*, 136 Wn. App. 169, 181, 149 P.3d 380 (2006). . . . We disapprove of the Court of Appeals’ interpretation of RCW 35A.82.060 as the statute’s

¹² The only difference between the two statutes is that RCW 35A.82.060 applies to code cities whereas RCW 35.21.714 applies to noncode cities. Qwest and the City agree the statutes share identical legislative history.

legislative history supports the conclusion that RCW 35A.82.060 precludes city taxation of charges for interstate service *regardless* of whether those charges are to another telecommunications company.”) (italics supplied by the Court; underlining added).

With respect to the material on pages 10-11 and 19-20 of the Petition, Comcast refers the Court to the following additional authority:

In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, 22 FCC Rcd. 5901, 5903, 5913, ¶¶ 5, 31, 2007 WL 1288052, at * 2, 10, (FCC 07-30 March 23, 2007) (“The Commission released the Cable Modem Declaratory Ruling in 2002, classifying cable modem service as an interstate information service, which includes no separate offering of a telecommunications service. The Commission found that the classification of cable modem service depended on the nature of the functions that the end user is offered and that cable modem service, in fact, combined ‘the transmission of data with computer processing, information provision, and computer interactivity, enabling end users to run a variety of applications.’ . . . In NCTA v.

Brand X the Supreme Court upheld, as a lawful construction of the Act, the Commission's conclusion that cable companies that sell broadband Internet service do not provide 'telecommunications services'. . . . We conclude, consistent with the Commission's finding in the *Cable Modem Declaratory Ruling*, *Wireline Broadband Internet Access Services Order*, and *BPL-Enabled Internet Access Services Order*, and the Supreme Court's decision in *Brand X*, that the use of this telecommunications transmission component as part of a provider's offering of wireless broadband Internet access service to end users using its own transmission facilities is not a 'telecommunications service' because it is part and parcel of the Internet access service's information service capabilities. Specifically, we find that an end user subscribing to wireless broadband Internet access service expects to receive (and pay for) a finished, functionally integrated service that provides access to the Internet, rather than receive (and pay for) two distinct services -- Internet access service and a distinct transmission service.") (footnotes omitted; underlining added).

With respect to the material on page 8, footnote 4, of the Petition, Comcast refers the Court to the following additional authority:

Concentric Network Corp. v. Commw., 897 A.2d 6, 15 (Pa. Commw. Ct. 2006) (*en banc*), was affirmed by the Pennsylvania Supreme Court, 922 A.2d 883 (2007) (*per curiam*).

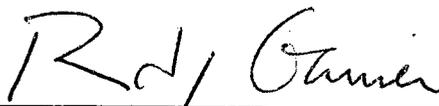
With respect to the material on pages 10-11 of the Petition, Comcast refers the Court to the following additional authority:

Scott M. Edwards, *Local Court Upholds Telephone Utility Tax as Imposed on Cable Internet Access Charges*, 17 J. MULTISTATE TAXATION & INCENTIVES 32, 33 (2007), 2007 WL 1429614 (“The court [in *Cnty. Telecable of Seattle, Inc. v. City of Seattle*, 136 Wn. App. 169, 149 P.3d 380 (2006)] seemed to apply circular reasoning The appellate court’s segregation of Comcast’s Internet access service between data transmission and the Internet services enabled by that transmission would appear to directly contradict the decision in National Cable & Telecommunications Ass’n v. Brand X Internet Services, 545 U.S. 967 (2005)”).

Respectfully submitted,

Davis Wright Tremaine LLP
Attorneys for Comcast

Dated: September 7, 2007

By 

Randy Gainer
WSBA No. 11823
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2007, I caused to be served by first class mail, postage prepaid, a true and correct copy of the Petitioners' Statement of Additional Authorities filed in connection with the above-referenced matter upon the following counsel of record at the following addresses:

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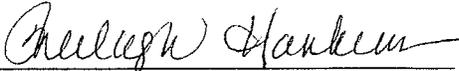
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A copy of the above-referenced document was also sent by first-class mail, postage prepaid to the following:

The Honorable Rob McKenna
Attorney General of the State of Washington
1125 Washington Street S.E.
P. O. Box 40100
Olympia, WA 98504-0100

Dated this 7th day of September, 2007.



Sheilagh Hankins

