

IN THE SUPREME COURT OF THE STATE OF OREGON

CITY OF EUGENE, an Oregon  
municipal corporation,

Plaintiff-Appellant,  
Respondent on Review,

v.

COMCAST OF OREGON II, INC.,  
an Oregon corporation,  
Defendant-Respondent,  
Petitioner on Review.

Lane County Circuit Court

No. 160803280

CA A147114

S062816

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**JOINT BRIEF ON THE MERITS OF *AMICI CURIAE***

**OREGON CABLE TELECOMMUNICATIONS ASSOCIATION;  
AMERICAN CABLE ASSOCIATION; NATIONAL CABLE &  
TELECOMMUNICATIONS ASSOCIATION; OREGON  
TELECOMMUNICATIONS ASSOCIATION; WASHINGTON  
INDEPENDENT TELECOMMUNICATIONS ASSOCIATION;  
OREGON BUSINESS ASSOCIATION; ASSOCIATED OREGON  
INDUSTRIES**

**FILED IN SUPPORT OF PETITIONER COMCAST OF OREGON II,  
INC.**

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Review of the Decision of Judgment of the Court of Appeals on Appeal from a  
Judgment of the Circuit Court for Lane County;  
Honorable Karsten Rassmussen, Judge

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Opinion Filed: May 21, 2014  
Author of Opinion: Schuman, Senior Judge  
Concurring Judges: Duncan, Presiding Judge, and Wollheim, Judge

March 2015

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## INTRODUCTORY STATEMENT

*Amici curiae* Oregon Cable Telecommunications Association, American Cable Association, National Cable & Telecommunications Association, Oregon Telecommunications Association, Washington Independent Telecommunications Association, Oregon Business Association and Associated Oregon Industries (collectively, the *Amici*) jointly submit this brief on the merits in support of petitioner Comcast of Oregon II, Inc. (Comcast), and concur with and adopt by reference Comcast’s brief on the merits in its entirety (the Comcast Brief).

The *Amici* respectfully submit this brief on behalf of their members, and for the benefit of their broadband customers located throughout Oregon. They respectfully ask this court to reverse the decision of the Court of Appeals and rule that the City of Eugene’s (Eugene) 7% license fee is a tax barred by the Internet Tax Freedom Act (ITFA) or an additional franchise fee preempted by the federal Cable Act (Cable Act).

This brief highlights the substantial negative consequences that a “license fee” like Eugene’s would have on broadband investment and deployment for both consumers and businesses. If the Court of Appeals’ decision is upheld, local governments throughout Oregon — and in other parts of the country — will be emboldened to enact similar fees on Internet access service providers,



discouraging broadband Internet deployment and adoption. Exactions like the fee imposed by Eugene directly contravene both the plain language and the public policies set forth in the ITFA and the Cable Act.

### **STATEMENT OF IDENTIFICATION**

The *Amici* consist of the following three groups of seven total associations:

#### **A. The Cable Industry Associations**

The Oregon Cable Telecommunications Association (OCTA) is composed of Oregon cable companies whose mission is to promote the well-being of the cable industry through effective political and education activities;

The American Cable Association (ACA) is a national trade organization representing the unique concerns of 850 smaller and medium-sized, independent cable companies who provide broadband, phone and video services for nearly seven million subscribers primarily located in rural and smaller suburban markets across America. Through active participation in the regulatory and legislative process in Washington, D.C., ACA's members work together to advance the interests of their customers and ensure the future competitiveness and viability of their business; and

The National Cable & Telecommunications Association (NCTA, and collectively with ACA and OCTA, the Cable Industry Associations) is the principal trade association of the cable industry in the United States, representing cable operators serving more than 90 percent of the nation's cable television households. NCTA represents more than 200 cable program networks, as well as equipment suppliers and providers of other services to the industry.<sup>1</sup> The cable industry is the nation's largest broadband provider of high-speed Internet access, serving more than 51 million customers. The industry has invested more than \$210 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to more than 27 million American consumers. On behalf of its members, NCTA's primary mission is to advance the cable industry's public policy interests before Congress, the Executive Branch, independent administrative agencies, and the courts. NCTA also encourages and promotes the industry's operating, programming, and technology developments in order to better serve the American public.

The Cable Industry Associations share profound interests in maintaining the uniform application of federal laws with respect to taxation and fees imposed by local government entities on Internet service, for the benefit of their

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<sup>1</sup>Comcast is a member of both OTCA and NCTA.

members and consumers. Those interests promote the growth of capacity and enhancement of infrastructure essential for the continued growth and vitality of Internet services to the nation. The Cable Industry Associations believe that the Court of Appeals' decision establishes a dangerous precedent that has the potential to undermine important national statutory policies, stifle progress, and harm both their members and their members' customers.

## **B. The Telecommunications Associations**

The Oregon Telecommunications Association (OTA) is a trade association that represents the interests of telecommunications companies—both incumbent and competitive telecommunications companies—that operate in the state of Oregon. The member companies of OTA provide broadband and telecommunications services using facilities that are often constructed in the rights-of-ways of cities, much like Comcast holds a franchise from the City of Eugene; and

The Washington Independent Telecommunications Association (WITA, and jointly with OTA the Telecommunications Associations) is a trade association that represents the interests of incumbent telecommunications companies that operate in the state of Washington. Like members of OTA, members of WITA provide telecommunications services using facilities that are constructed in public rights-of-ways, including rights-of-ways of cities.

The Telecommunications Associations are particularly concerned that Eugene's approach will spread to other municipalities, including elsewhere in Oregon (OTA), and outside its borders to other states like Washington (WITA), resulting in widespread imposition of substantial fees on broadband Internet access service, which will ultimately impede the provision of broadband Internet access.

### **C. The Business Associations**

The Oregon Business Association (OBA) assists Oregon businesses — large and small, urban and rural — to achieve balanced policy solutions to strengthen both quality of life and the State's long-term economic competitiveness. More than 250 businesses, from Portland to Boardman, from homegrown to Fortune 500, have joined to support OBA's commitment to a healthy economy for all Oregonians; and

Associated Oregon Industries (AOI, and jointly with OBA, the Business Associations) is a member-driven advocacy organization, working for sound public policy on behalf of the business community. AOI is Oregon's largest comprehensive statewide business association, made up of 1,500 member companies of all types, sizes, and in every corner of the state. AOI members provide more than 200,000 jobs for working Oregonians, and the AOI

advocates aggressively and professionally in the state Legislature, agencies, and other entities to protect and advance the interests of Oregon business.

The Business Associations represent a broad base of small, medium and large businesses throughout Oregon and, collectively, their members are major consumers of broadband Internet services essential to the overall economic health of those businesses. So, while the Business Associations have no monetary interest in the outcome of this case, given the undesirable impact the Court of Appeals' decision has on Oregon's businesses and consumers—as well as the continued expansion of high speed Internet access throughout the state—OBA and AOI and their members have a significant interest in an ultimate resolution of the parties' dispute in favor of Comcast.

## **ARGUMENT**

### **A. The Purpose of ITFA is to Promote Development of the Internet, Unfettered by Taxation.**

Congress enacted ITFA to ensure that state and local governments did not impose taxes on Internet access or discriminatory or multiple taxes on electronic commerce. 47 USC § 151, Note, § 1101(a).<sup>2</sup> The reason for

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<sup>2</sup> See Comcast Brief at 20-38 for detailed analysis of ITFA, and legal arguments proving Eugene's license fee is barred by ITFA.

preempting state and local taxation of the Internet is set forth plainly in the statute:

“It is the policy of the United States... to promote the continued development of the Internet... and to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”

47 USC § 230(b). Congress has reaffirmed this policy on multiple occasions, extending the moratorium against state and local taxation of Internet access services and reaffirming that without ITFA, the Internet is a prime target for state and local governments to impose thousands of duplicative, discriminatory, overly burdensome, inconsistent, inappropriate and/or confusing state and local Internet access taxes. *See* S Rep No. 105-184, at 1 (1998); *see also* Pub L No 107-75, 115 Stat 703 (2001) (extending ITFA to November 1, 2003); Pub L No 108-435, 118 Stat 2615 (2004) (extending ITFA to November 1, 2007); Pub L No. 110-108 121 Stat 1024 (2007) (extending ITFA to November 1, 2014); Consolidated and Further Continuing Appropriations Act, 2015, HR 83, 113th Cong (2014) (signed by President Obama on December 16, 2014, extending ITFA to November 1, 2015)).

Indeed, state and local governments have attempted to tax Internet access services on several occasions. And each time, notwithstanding what these “taxes” were called, courts and revenue officials around the country have struck

down state and local taxes on Internet access services. *See, e.g., AOL LLC v. Iowa Dep't of Revenue*, 771 NW2d 404, 410 (Iowa 2009) (holding Iowa could not impose a sales tax on Internet services provided by America Online, LLC); *Cnty. Telecable of Seattle, et al. v. Seattle, Washington*, 164 Wash 2d 35, 44, 186 P3d 1032(2008) (holding Washington cannot impose telephone utility tax on Internet transmission activities); *Performance Marketing Association v. Hamer*, 2013 IL 114496 at \*7, 375 Ill Dec 762, 767-68 , 998 NE 2d 54, (2013) (holding ITFA preempts Idaho “click-through” nexus law provisions because they constitute a prohibited and discriminatory tax on electronic commerce); *America Online, Inc. v. Johnson*, WL 1751434 at \*3 (Tenn App, July 30, 2002) (acknowledging that substantial nexus does not exist for taxation when the only contact with the state is through the Internet); New Hampshire Technical Information Release No 2012-02 (07/10/2012) (providing that effective June 21, 2012, the New Hampshire Communications Service Tax (CST) would no longer apply to Internet access, and that the New Hampshire Department of Revenue Administration could not “enforce any existing assessments, to promptly withdraw any pending assessments and prohibits the Department from issuing any additional assessments with respect to Internet access and the CST”) (*citing* amendments to CST, NH Stat § 82-A:1, *et seq.*); Louisiana Letter Ruling No 03-004 (04/04/2003) (acknowledging ITFA prohibits taxing Internet access charges, and thus “the State of Louisiana cannot impose its sales and use

tax on [Internet access] service.”); *Comcast of Colorado IX, LLC v. Golden, Colorado, et al.*, CO Jefferson County District Court Case No 13CV31253 (July 1, 2014 Order) (holding ITFA preempts Golden’s taxation of high-speed broadband Internet services); *Mile Hi Cable Partners, et al. v. Denver, Colorado, et al.*, CO Denver County District Court 2<sup>nd</sup> JD Case No 08CV6208 (August 7, 2009 Order) (prohibiting Denver’s attempt to impose sales and use tax on cable high-speed Internet services).<sup>3</sup>

While ITFA applies to a broad array of taxes and fees, it is particularly focused on taxes that single out Internet access. This concern was characterized best by ITFA co-sponsor Senator Ron Wyden in 1998, who likened the Internet to the “golden goose” in the eyes of the thousands of state and local taxing jurisdictions wanting to raise revenue, cautioning that “[y]ou have the real prospect that policies could be adopted that would cause great damage to the Internet’s development and cause that golden goose to lay far fewer eggs.” 144 Cong Rec H1817 (daily ed Oct 7, 1998); *see also* Comcast Brief at 32-38 (providing thorough ITFA policy and legislative history background).

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<sup>3</sup> Copies of the New Hampshire Information Release, the Louisiana Letter Ruling and the Colorado trial court orders are included as part of the Appendix to this brief.



**B. Consistent with the Policy of ITFA, the Cable Act was Enacted to Promote Cable and Internet Technologies by Preempting Inconsistent Local Approaches to Regulating the Provision of Cable and Internet Services Through Taxes and Fees.**

The Cable Act prohibits municipalities from charging “franchise fees” in excess of 5% of revenues from cable service, and provides that “any provision of law of any State, political subdivision, or agency thereof, or franchising authority ... which is inconsistent with this [Cable Act] shall be deemed to be preempted and superseded.” 47 USC §§ 542(b), 636.

Consistent with the public policy supporting ITFA, the Cable Act’s cap on franchise fees was adopted for the express purpose of setting a uniform national policy to preempt the damage that would ensue from thousands of inconsistent local approaches using “franchise-fees” to discriminatorily raise revenue from the cable industry. *See* 47 USC §§ 521, 556; *see also City of Chicago v. Comcast Cable Holdings, L.L.C.*, 231 Ill 2d 399, 406, 326 Ill Dec 620, 900 NE 2d 256 ( 2008) (“Excessive fees effectively create a regressive, indirect tax on subscribers.”) (citing *In re Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems*, Cable Television Report & Order, 36 FCC 2d 143, 1972 WL 26659, at ¶¶ 171, 185 (FCC February 3, 1972)).<sup>4</sup>

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<sup>4</sup> *See* Comcast Brief at 38-53 for further public policy background, and legal arguments proving that if the Eugene license fee is not a tax barred by ITFA, it is an excessive franchise fee prohibited by the Cable Act.

The Cable Act promotes Internet and cable technologies by freeing cable systems from excessive franchise fees and discriminatory taxation, and (as recognized by all other reported appellate cases that have addressed the issue)<sup>5</sup> by protecting cable modem Internet service offered over the same facility from such fees and taxes. The local franchise fee landscape prompting the Cable Act — notably, the franchise fee cap in the Cable Act was based on Congress’ noted concerns that “many local authorities had extracted high [franchise] fees more for revenue-raising than for regulatory purposes” — also mirrors the reasoning behind Congress’ decision to prohibit Internet taxation with ITFA before the local taxing situation spiraled out of control. *Chicago v. Comcast*, 900 NE2d at 259.

Together, both ITFA and the Cable Act are founded on strong federal policy principles supporting Internet growth, freedom from excessive taxation, and legal and regulatory consistency.

**C. Thousands of Local Taxing Authorities Could Be Encouraged to Maximize Tax Revenues by Following the City of Eugene’s “Franchise Fee” Framework, to the Detriment of Consumers, Innovation, Investment and Conformity.**

There are currently 250 local taxing jurisdictions in Oregon that control access to public rights-of-way, and 30,000 such cities across the country. In

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<sup>5</sup> See Comcast Petition for Review at 19.

direct contravention of the public policies supporting ITFA and the Cable Act, the Court of Appeals' decision to uphold Eugene's license fee creates a dangerous loophole permitting localities to sidestep ITFA and the Cable Act by disguising revenue-raising mechanisms as "license fees" on Internet access services. While these exactions are presented as fees granting a "specific privilege, service, or benefit conferred" on the Internet access provider, they are in reality taxes. 47 USC § 151, Note, ITFA § 1105(8)(A)(i). It is well established, and conceded by Eugene, that courts will look to the substance of an exaction and not simply the name assigned to it. *AT&T Comm'n's of the Pacific Northwest, Inc. v. City of Eugene*, 177 Or App 379, 387 n 3, 35 P3d 1029 (2001), *rev den*, 334 Or 491 (2002) (noting Eugene's contention that a "fee" in one of its taxing ordinances "amounts, in substance, to a tax," thus conceding that substance takes precedence over form); *MCI Communications Services, Inc., et al. v. City of Eugene*, \_\_\_ F3d \_\_\_, 359 Fed Appx 692, 695 (9th Cir 2009) ("the fact that [a City of Eugene ordinance] labels a charge as a 'fee' rather than a 'tax' is not controlling"); *see also American Oil Co. v. P. G. Neill, et al.*, 380 US 451, 455, 85 S Ct 1130, 14 L Ed 2d 1 (1965) ("... it is firmly established that this Court concerns itself with the practical operation of the tax, that is, substance rather than form."); *State of Wisconsin, et al. v. J. C. Penney*, 311 US 435, 443-444, 61 S Ct 246, 85 L Ed 267 (1940) ("... the descriptive pigeon-hole" given to an exaction is "of no moment"; "In whatever language a

statute may be framed, its purpose must be determined by its natural and reasonable effect.’’’) (internal citations omitted).

In this case, the Court of Appeals distinguished Eugene’s 7% license fee from an ITFA-barred Internet tax by simply stating that the fee related to the privilege or benefit to use the city’s right-of-way – notwithstanding the fact Comcast already had a contractual preexisting right to occupy the right-of-way.<sup>6</sup> In other words, no additional privilege or benefit was actually conferred to Comcast, but the Court of Appeals upheld the license fee anyway thus accepting the stated purpose of the fee without looking to its substance.

If Eugene’s license fee is upheld by this court, thousands of other localities will be encouraged to follow suit, enacting “franchise fees” like Eugene’s that purportedly permit access to rights-of-ways even when no benefit or privilege is actually conferred. Form will thus be elevated over substance to the detriment of broadband providers and consumers throughout Oregon and the country. Based on their collective experience, *Amici* see the bigger picture: if exactions like the Eugene license fee are permitted, localities will be able to wrap Internet taxation in any vehicle or mechanism they choose, so long as the

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<sup>6</sup> See Comcast Brief at 20-32 for legal arguments proving Eugene’s license fee did not confer any privilege or benefit to Comcast.

wrapping purports to confer an illusory benefit. This would effectively destroy ITFA's protection, and the following results would likely ensue.

1. Taxation on the Broadband Industry Stunts Investment, Economic Growth and Technological Advancement, Ultimately Harming Everyone: Effect on Broadband Deployment

Consistent with the public policies supporting ITFA and the Cable Act, federal law recognizes the importance of broadband deployment and adoption to the nation:

“The deployment and adoption of broadband technology has resulted in enhanced development and public safety for communities across the Nation, improved health care and education opportunities, and a better quality of life for all Americans. Continued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth.”

47 USC § 1301(1)-(2).<sup>2</sup> If thousands of localities are permitted to tax broadband Internet by using the Eugene roadmap to raise revenue, broadband deployment and corresponding investment will drop considerably.

Dr. Raul Katz is an international telecommunications industry consultant, Adjunct Professor in the Division of Economics and Finance at Columbia Business School, and the Director of Business Strategy Research at the Columbia Institute for Tele-Information. In his *Assessment of the Economic*

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<sup>2</sup>See Comcast Brief at 36-38 for further federal policy background of the government's support of broadband deployment.

*Impact of Taxation on Communications Investment in the United States – A Report to the Broadband Tax Institute* (October 2012) (*Katz Assessment*), Dr. Katz performed a case study quantifying the negative impact taxation has on broadband deployment and corresponding investment. *Katz Assessment* at 6. Specifically, Dr. Katz found that “taxes tend to raise the required pre-tax rate of return of the capital invested,” such that “a rise in the tax rate in an open economy causes a net capital outflow, and negative economic welfare.” *Id.* at 10. While Dr. Katz’ study focuses specifically on the imposition of sales taxes on investment by broadband providers, his conclusions apply equally to any type of tax or fee that increases the costs of broadband. *E.g., id.* at 10-11 (“a reduction of corporate income taxation determines, over time, an increase in the level of gross fixed capital formation.”)

Taxes are intended to provide positive effects by contributing to the delivery of public services, but they also negatively affect a company’s incentives and willingness to make investments, while reducing the supply of funds available to finance such investments. *Id.* at 10. Taxation often plays a significant role in a company’s investment decisions, both in regard to choosing “which business to invest (*e.g.*, broadband or other) and which geographic location to invest. *Id.* at 10-11. Of particular application to the present case:

“In industries such as telecommunications and cable TV that provide broadband services, a critical platform to deliver

information, public services, and ensure economic growth, taxation tends to reduce the level of capital investment.”

*Id.* at 6. According to Dr. Katz, taxation reduces the level of capital broadband investment at the following rate: a decrease of 1 percentage point of local sales tax rate affecting initial equipment purchasing (the deployment of communications infrastructure requires investment in equipment) would increase broadband investment \$358 million per year. *Id.* at 6, 9.

Dr. Katz’s calculations are based on and confirmed by “real life” cases such as the situations in North Dakota, Iowa, and South Carolina. *Id.* at 6, 20. North Dakota, for instance, eliminated sales tax on broadband equipment, which resulted in an actual telecommunications and cable TV investment increase of 207%. *Id.* at 6. Iowa did not completely eliminate its sales tax, but decreased it from 3% to 1.86%, which also resulted in a corresponding investment increase of 37%. *Id.* On the other hand, South Carolina raised its sales tax rate 1%, resulting in a decrease of 33% in investment. *Id.* at 21. In line with this results, Dr. Katz contemplates a nationwide policy aimed at promoting network deployment by totally eliminating sales tax on equipment, which could result in an increase of \$1.72 billion in broadband deployment investment, or 123% of the amount of the taxes reduced. *Id.* at 6, 26.

The positive results of broadband investment are widespread and far-reaching, and broadly distributed across the numerous businesses, non-profits, governments, and of course, consumers, that use information technology and communication services. *Id.* These positive benefits include both short-term effects from initial network construction, and long-term “spill-over” resulting from new network construction—particularly broadband—which impact both enterprises and consumers. *Id.* at 6-7, 23. To quantify these benefits, Dr. Katz calculates that an increase in broadband investment of \$1.48 billion would:

- Increase broadband deployment by 534,000 new connections in the short term, which means many more Americans would obtain much-needed broadband service;
- Generate \$7.24 billion in additional annual GDP in the first year after the increase in investment, and \$33.13 billion of output over 3 years; and
- Create 53,000 new jobs in the first year after the increase in investment, and 243,000 over three years.

*Id.* Additionally, the new economic activity would generate substantial offsetting revenues for state and local governments as new employment and economic activity generates income, sales, property, and other tax revenue for



governments. *Id.* In other words, more broadband investment and less broadband taxation benefits consumers, industry and government alike.

On the other hand, the more the broadband industry is taxed and regulated, the slower and more expensive broadband deployment will be, ultimately harming consumers the most. As recently reported by the FCC, 17% of Americans still do not have access to broadband Internet, including 37% of rural Oregonians. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, FCC Dkt No 14-126, ¶¶ 4, 139, 179, Appx E (Feb 4, 2015).

Additionally, ITFA co-sponsor Ron Wyden recently emphasized that taxes on Internet access are likely to disproportionately impact lower-income Americans. *See Ron Wyden, Don't Discourage Use of Internet*, USA Today, 9A (Nov 28, 2014) (“It is clearly in America’s interest to prevent regressive Internet taxes that stifle America’s winning digital economy and put an unfair burden on working-class families.”)

2. Taxation on the Broadband Industry Stunts Investment, Economic Growth and Technological Advancement, Ultimately Harming Everyone: Effect on General Broadband Costs

If local revenue-raising mechanisms like the Eugene license fee and its inevitable offspring can so easily thwart the congressional preemption of ITFA and the Cable Act, general broadband costs will increase as these disguised

taxes are passed-through to customers, harming the industry, progress and business, and consumers most of all. According to a recent policy brief by Robert Litan and Hal Singer for the Progressive Policy Institute (PPI), unencumbered broadband fee increases in the Title II reclassification landscape could reach as high as **\$15 billion** per year from state and local taxation on broadband Internet access. Robert Litan and Hal Singer, *Outdated Regulations Will Make Consumers Pay More for Broadband*, PPI Policy Brief, 3 (December 2014) (Litan and Singer's PPI Policy Brief).

This potentially enormous price increase will undoubtedly be passed-through to consumers; but economists disagree to what extent. Economists Litan and Singer assert that according to history and economic models of competitive markets, the entire increase will “pass-through” and consumers will actually bear 100% of the tax burden. *Id.* at 2. Taking a slightly more conservative approach, economist Austan Goolsbee, asserts that consumers will bear 55% of the tax burden, and broadband providers will bear the remaining 45%. In this scenario, the consumer will still bear the majority of the burden, and the rest of the burden borne by businesses will in turn necessarily impact broadband investment (and harm consumers), as demonstrated above in connection with broadband deployment. Austan Goolsbee, *The Value of Broadband and the Deadweight Loss of Taxing New Technology*, National

Bureau of Economic Research Working Paper 11994, Cambridge, MA, 4  
(January 2006).

In response to this potential \$15 billion dollar increase, both broadband deployment and adoption will suffer, as many consumers will terminate their service altogether. Free Press' Research Director submitted a letter to the F.C.C. in 2010 asserting that according to calculated estimates for the general elasticity of broadband demand, and a scenario imposing a potential consumer broadband tax of \$1.69 per month, nearly 2 million broadband subscribers would terminate service. Notice of Oral Ex Parte Communication, *Universal Service Contribution Methodology*, WC Docket No 06-122 (August 10, 2010). To put this number in context, Oregonians and others could see their average monthly Internet bill increase by \$5.58 per Litan and Singer's PPI Policy Brief, more than three times as much as the \$1.69 contemplated in Free Press' scenario. See Litan and Singer's PPI Policy Brief, 3. While it is impossible to know the exact impact on consumer prices in Oregon that may result from cities throughout the state following the Eugene example upheld by the Court of Appeals, there is ample cause for the congressional preemption embodied in both ITFA and the Cable Act.

## CONCLUSION

For the reasons stated above, and in Comcast's Brief, *Amici* request that the court reverse the decision of the Court of Appeals and affirm the trial court's judgment for Comcast.

Respectfully submitted this 25th day of March, 2015.

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**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE  
SIZE REQUIREMENTS**

Brief Length

I certify that (1) this brief complies with the word-count limitation ORAP 5.05(2)(B) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,297 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(g).

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I further certify that on March 25, 2015, I served the foregoing JOINT BRIEF ON THE MERITS OF *AMICI CURIAE* on the following parties via the eFiling system:

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