

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



May 27, 2010

DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

The Honorable President and  
Members of the Baltimore  
City Council  
c/o Karen Randle, Executive Secretary  
409 City Hall  
Baltimore, MD 21202

**REVISED**

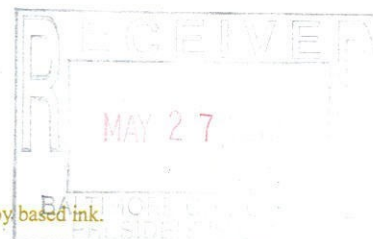
RE: City Council Bill 10-0517-Telecommunications Tax – Television Connections

Dear President and Members:

You have requested the advice of the Law Department regarding City Council Bill 10--517 which would extend the telecommunications tax to “a wired or wireless connection, identifiable by a unique account number, that allows television programming to be viewed on a television set.”

The State of Maryland has granted the Mayor & City Council of Baltimore broad taxing powers. Article II, Section 40 of the Baltimore City Charter gives the City the power ”to have and to exercise, within the limits of Baltimore City, in addition to any and all taxing powers heretofore granted by the General Assembly of the Maryland to the Mayor and City Council of Baltimore, the power to tax to the same extent as the State of Maryland has or could exercise said power within the limits of Baltimore City as a part of its general taxing power; and to provide by ordinance for the imposition, assessment, levy and collection of any tax or taxes authorized by this subsection; and from time to time to grant exemptions and to modify or repeal existing or future exemptions....” The Mayor and City Council has exercised this power by enacting numerous tax provisions. While local governments are generally prohibited from enacting sales tax measures, an excise tax is within the broad taxing powers of the City. § 11-102(a) of the Tax General Article.

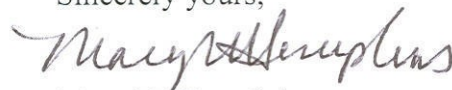
However, any City ordinance is subordinate to federal law. In the Federal Communications Act of 1996, Congress has specifically exempted providers of direct-to-home satellite service from collection or remittance of any tax or fee imposed by a local taxing jurisdiction. Public Law 104-104 §602 (a). In addition, 47 U.S.C.A. §542 (b) sets a five percent ceiling on the franchise fee a cable operator must pay on gross cable revenues. Section 542 (g) defines “franchise fee” as including any tax, fee, or assessment of any kind, but the term does not include taxes and fees of general applicability such as general sales, property, income, and utility taxes. A court, therefore, would not see a tax on wired or wireless connections that allows television programming to be viewed on a television set as a tax of general applicability. Consequently, if enacted, this bill could be successfully challenged as it applies to cable satellite and internet.



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The Internet Freedom Act bars state and local taxes on internet access until 11/1/2014. PL 105-277. The City already taxes the voice over internet protocol services provided by cable operators. Considering the current body of federal law on this topic, the Law Department concludes that the bill is preempted by federal law. Consequently, if enacted, this bill could be successfully challenged as it applies to cable, satellite, and internet. The Law Department, therefore, does not approve the bill for form and legal sufficiency.

Sincerely yours,



Mary N. Humphries  
Chief Solicitor

cc: Honorable James Kraft  
Angela Gibson, City Council Liaison  
George A. Nilson, City Solicitor  
Elena R. DiPietro, Chief Solicitor  
Ashlea Brown, Assistant Solicitor  
Hilary Ruley, Assistant Solicitor  
Terese Brown, Assistant Solicitor