

COVER SHEET – AGENDA ITEM #R4

For Commission Meeting: September 17, 2018

“Contingency Request: FCC Rule Making re: Cable Franchise Agreements and Fees”

Staff Recommendation

Staff recommends the MHCRC authorize up to \$5,000 from contingency to file comments in the FCC proceeding regarding in-kind offsets by cable companies to cable franchise fees and regulation of mixed-use networks.

Background

On September 5, 2018, the FCC released a draft Second Further Notice of Proposed Rulemaking (Second FNPRM) addressing issues raised by a remand from the 6th Circuit Court of Appeals. Staff anticipates that the FCC will adopt the Second FNPRM at its September 26 meeting, allowing a short period to file formal comments and replies expressing opposition, likely in October and November. The FCC could issue a final order on the cable issues by the end of this year. Appeal periods on that order would run from that point. Comments will be filed on behalf of the MHCRC either separately or jointly with other local government coalitions.

The FCC’s draft notice tentatively concluded that (from FCC news release):

- “cable-related, in-kind contributions required by LFAs from cable operators (both new entrants and incumbents) as a condition or requirement of a franchise agreement should be treated as “franchise fees” subject to the statutory five percent franchise fee cap set forth in Section 622 of the Act, with one limited exception.”
- “capital costs for public, educational, and government channels required by the franchise are the only cable-related, in-kind contribution excluded from the statutory five percent franchise fee cap.”
- “the mixed-use network ruling should be applied to prohibit LFAs from using their video franchising authority to regulate non-cable services offered over cable systems by incumbent cable operators, with the exception that LFAs are not precluded from regulating I-Nets.”

Although the order does not include a list of specific in-kind contributions, the FCC proposes to allow cable operators to deduct the market value of *in-kind* contributions from cable franchise fee payments. Deductions could include the *value* of the capacity for designated PEG channels and Video-on-Demand, live video transport for council and county commission meetings, and program listings in the companies’ program guides. If upheld, the in-kind rules could significantly reduce cable franchise fees leaving municipalities with the tough choice between lower franchise fees or continuing community media obligations of the franchises.

Regarding mixed-use networks (i.e., networks that provide broadband, voice services, and other non-cable services in addition to video programming services), the Second FNPRM *may* preempt

LFAs from regulating non-cable services or receiving fees from cable operators' use of the right-of-way to deliver non-cable services. The rulemaking exempts I-Nets, so presumably, I-Net could still be regulated as part of a cable franchise agreement. More legal analysis will need to be done to assess the full impact of this provision of the rulemaking.

Link: <https://docs.fcc.gov/public/attachments/DOC-353963A1.pdf>

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