



**Request for City Council Committee Action
From the City Attorney's Office**

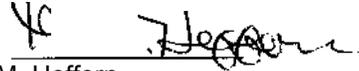
Date: May 03, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: Appeal of the Federal Communications Commission's Decision of December 20, 2006,
Released on March 5, 2007

Recommendation: That the City Council authorize the City Attorney's Office, on behalf of the City of Minneapolis, to join in the appeal being filed by other interested communities across the country of the Federal Communications Commission's Report and Order.

Previous Directives:

Prepared by: Petein/V. Ginder, eputy City Attorney, Civil Phone: (612) 673-2478

Approved by: 
 Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

- Neighborhood Notification
- City Goal(s):
- Comprehensive Plan
- Zoning Code
- Other

Background/Supporting Information

On December 20, 2006, the Federal Communication Commission ("FCC") issued a Report and Order which purported to find that local franchising authorities have acted unreasonably and delayed competitive entry. The actual text of the decision was released on March 5, 2007. The FCC's Report and Order claims to preempt local franchising authority and to change the normal franchise process in certain areas, with respect to new applicants:

- Time limits for negotiation ("shot clock" and FCC grant of "interim" franchise)
- Build — out requirements
- Franchise fees, application fees, in-kind benefits

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- PEG and I-Net support
- Authority over non-cable services and mixed use facilities

The FCC's Further Notice of Proposed Rule making calls for comment on extending the findings in the Order beyond new applicants to include existing cable operators when their franchises come up for renewal.

Appeals of the Order have been filed by a number of local government interests in federal circuits throughout the country. The various appeals have been consolidated in the United States Court of Appeals for the Sixth Circuit. At the request of the Board of the International Municipal Lawyers Association ("IMLA"), the City Attorney's Office has reviewed whether it would be advisable for the City to consider supporting the challenge to the FCC decision. IMLA has retained a national firm to write and file the brief(s) on behalf of the local governments for a flat fee of \$500.00. We believe that it is appropriate for the City of Minneapolis to sign on either as a named party in the appeal and/or to provide financial support for the brief to be filed on behalf of the interested communities in the amount of \$500.00.

M:drive/ginder/w&m budget Itrs/5.3.07 Appeal of Federal Communications Commission's Decision