LRB-RESEARCH AND ANALYSIS SECTION	
JUDICIARY AND LEGISLATION COMMITTEE	**ITEM 2, FILE # 070052**
APRIL 30, 2007	**RICHARD L. WITHERS**

Resolution reserving and appropriating up to $10,000 from the Special Purpose Account - Outside Counsel/Expert Witness Fund for the purpose of engaging Miller & Van Eaton, P.L.L.C., in actions challenging a Federal Communication Commission ruling limiting municipal authority over cable video franchising.

Background

1. The Federal Communication Commission (FCC) issued a ruling on December 20, 2006, published March 5, 2007, substantially altering the manner in which municipalities may negotiate, implement and regulate local cable video franchising agreements.

2. Numerous organizations and coalitions across the country are challenging the FCC ruling in various U.S. Courts of Appeal. These organizations include the United States Conference of Mayors, National Association of Counties and the National League of Cities. A number of municipalities have joined in a coalition represented by the firm of Miller & Van Eaton to challenge the FCC's ruling. Miller & Van Eaton have successfully assisted and represented the City of Milwaukee in previous matters involving cable franchising.

3. Among other issues, the challengers argue that the ruling is beyond the lawful jurisdiction of the FCC and beyond the powers delegated to the FCC by the United States Congress.

4. The new FCC ruling does the following:

   - It imposes a 90-day period during which municipalities must make a decision to deny or accept an application from any new entrant into the franchise market.
   - Endangers public, educational and government (PEG) resources that assure equal access to modern training and equipment used by commercial media.
   - Prohibits local franchising authorities (LFAs) such as the City from negotiating for more than the 5% community compensation fee.
   - Limits funding for Institutional Networks (I-Nets) thereby endangering an important potential communications tool in emergencies.
   - Limits the "Build-Out" protections that currently permit cities to prevent or reduce "cherry-picking" by franchises of more profitable neighborhoods.

5. The FCC ruling also contains a new Notice of Proposed Rulemaking (NPRM), applying many of these changes to already existing franchise agreements and franchise renewals. The resolution authorizes a response to the NPRM.

Discussion

1. The FCC's Order and NPRM will limit the City's ability to establish a fair value for its conduits and public rights-of-way.

2. The FCC's Order will likely have the effect of reducing the ability of smaller entrants into a franchise market.

3. The FCC's Order will likely increase the disparity in services available between less affluent neighborhoods and more affluent neighborhoods due to "cherry-picking."

4. The FCC Order will likely result in the diminished capacity of City cable systems to provide non-commercial, educational and governmental programming.

5. Failure to reverse or modify the FCC Order will likely result in the loss to the City of substantial revenues and infrastructure support.

6. It should be noted that a number of these same issues may be affected by legislation currently before the Wisconsin Legislature. Assembly Bill 207, as amended April 24, 2007, is pending passage in the Assembly when it returns on May 8, 2007. The Senate referred companion Senate Bill 107 to the Finance Committee on April 24. This legislation would substantially alter the roles of the State and municipalities relating to cable television and video services.

Summary of Fiscal Impact

1. The proposed payment will reduce the Outside Counsel/Expert Witness Fund Special Purpose Account by $10,000.

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