



Legislation Text

File #: 070052, **Version:** 0

070052
ORIGINAL

THE CHAIR

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.

This resolution reserves and appropriates up to \$10,000 from the Outside Counsel/ Expert Witness Fund of the Office of the City Attorney for the purpose of engaging the firm of Miller & Van Eaton in a multi-party action challenging the Federal Communication Commission (FCC) ruling of December 20, 2006, published March 5, 2007, substantially altering the manner in which municipalities may negotiate, implement and regulate local cable video franchising agreements. In addition to the Miller & Van Eaton coalition, numerous other organizations and coalitions across the country are challenging the FCC ruling in various U.S. Courts of Appeal including the United States Conference of Mayors, National Association of Counties and the National League of Cities. Among other issues, the appellants will 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.

The new FCC ruling 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. The ruling endangers public, educational and government (PEG) resources to assure equal access to modern training and equipment used by commercial media. The ruling prohibits local franchising authorities (LFAs) from negotiating for more than the 5% community compensation fee. The ruling limits funding for Institutional Networks (I-Nets) endangering an important potential communications tool in emergencies. The ruling also limits the "Build-Out" protections that currently allow cities to prevent or reduce "cherry-picking" by franchises of more profitable neighborhoods thereby limiting access to cable video in less affluent neighborhoods.

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

Whereas, The Federal Communications Commission (FCC) released a Report and Order and Notice of Proposed Rulemaking (NPRM) on March 5, 2007, reflecting a decision adopted on December 20, 2006, by a 3 to 2 majority of the FCC concerning the implementation of s. 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992; and

Whereas, The Report and Order of the FCC have the effect of substantially altering the process whereby municipalities negotiate new franchise agreements for the provision of cable video services, and the NPRM seeks to apply many of these changes to existing or renewing franchise agreements; and

Whereas, The Order limits the time-frame for approval or denial of applications to 90 days by a local franchising authority (LFA), limits the extent to which an LFA may negotiate for public, educational and government (PEG) access and funding, limits an LFA in negotiating to assure that equal access to modern training and equipment used by commercial media is available to non-commercial media, prohibits an LFA from negotiating for more than a 5% community compensation fee, limits the ability of an LFA to negotiate for funding for Institutional Networks (I-Nets), and limits the "Build-Out" protections that currently allow an LFA to prevent or reduce "cherry-picking" of more profitable neighborhoods by franchisees; and

Whereas, The Order and NPR will likely result in the following::

Reduction in negotiated fees, payments and services received by an LFA under cable video franchise agreements;

Reduction in the ability of smaller entrants into a franchise market to successfully compete;

Increase in the disparity of services available to less affluent neighborhoods compared to more profitable neighborhoods due to "cherry-picking";

Creation of an uneven playing field between new entrants and existing built-out systems due to "cherry-picking";

Reduction in resources to build and maintain I-Nets which have been shown to be important communication resources especially in public emergencies;

Reduction in access to cable video systems by non-commercial, educational and governmental programs; and

Whereas, The Order and NPRM dramatically alter the federal-local relationship in regulating the provision of cable video reversing 2 decades of successful practice and policy under the Cable Communications Policy Act of 1984, as amended; and

Whereas, The substantial continuing benefits the City of Milwaukee, a local franchising authority, has received from cable video franchise arrangements are significantly endangered as a result of the Order and NPRM; and

Whereas, The Order and NPRM will prevent the City from establishing the value of its conduits and public rights-of-way; and

Whereas, The Order and NPRM appear to be beyond the jurisdiction and authority of the FCC under the powers granted to it by Congress; and

Whereas; The Miller & Van Eaton, P.L.L.C., firm has a strong history of successfully representing the City of Milwaukee in matters related to cable video franchising; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City take all necessary and appropriate action to challenge the aforementioned Report and Order of the FCC and to respond to

the Notice of Proposed Rulemaking; and, be it

Further Resolved, That the sum of \$10,000 be reserved within the 2007 Special Purpose Account - Outside Counsel/Expert Witness Fund (006300-0001-9990-S118-2007) for the purpose of engaging the firm of Miller & Van Eaton, P.L.L.C., to represent the City in a multi-party action challenging the Report and Order of the FCC and to represent the City in responding with other parties to the Notice of Proposed Rulemaking; and, be it

Further Resolved, That the City Comptroller is authorized to reserve the sum of \$10,000 in the 2007 Outside Counsel/Expert Witness Fund and to appropriate up to \$10,000 upon the request of the City Attorney for purposes of engaging the firm of Miller & Van Eaton, P.L.L.C., to represent the City in actions challenging the Report and Order of the FCC and responding to the Notice of Proposed Rulemaking.

Office of the City Attorney
LRB07188
RLW
4/10/20071