



STAFF REPORT

DATE: June 12, 2018

TO: Ronald L. Olson, City Manager

VIA: Kathy Davis, City Attorney

FROM: Traci Briggs, Deputy City Attorney

SUBJECT: Joining litigation against Spectrum to recover underpayment of cable services franchise fees.

BACKGROUND AND FINDINGS:

Spectrum, as a cable service provider, is required to make state-law specific franchise payments to each city where it provides services, based on gross revenue it collects in that city. In 2017, thirty-three (33) cities joined together to hire NewGen Strategies to analyze franchise payment records for 2013-2017. It was determined that Spectrum excluded several categories of revenue from gross revenue resulting in lower franchise payments to the cities. For Killeen, the estimated underpayment for the period is \$151,486.00. Those cities are now considering litigation against Spectrum to recover those payments.

THE ALTERNATIVES CONSIDERED:

The city can participate in the litigation in an attempt to potentially recover the unpaid cable services franchise fees, or the city can opt to not join the litigation.

Which alternative is recommended? Why?

Staff recommends joining the litigation. In addition to recovering money owed to the city, a secondary goal is to establish a proper method of accounting going forward with Spectrum.

CONFORMITY TO CITY POLICY:

This action conforms to city policy and state law.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The law firm of Lloyd Gosselink proposes to represent all interested cities and has prepared an estimated budget of \$375,000 to take the case through trial. The will be divided among those cities that chose to participate based on the amount each city stands to recover. The city's estimated allocation of costs is \$25,237.50. There is potential for an offset of legal fees if the cities are successful in litigation.

Is this a one-time or recurring expenditure?

One time.

Is this expenditure budgeted?

A budget amendment is required.

If not, where will the money come from?

Funding for the professional services agreement will come from the fund balance of the General Fund.

Is there a sufficient amount in the budgeted line-item for this expenditure?

Upon approval of the budget amendment.

RECOMMENDATION:

Staff recommends that the City Council authorize the City joining litigation against Spectrum to recover underpayment of cable services franchise fees.

DEPARTMENTAL CLEARANCES:

Finance

ATTACHED SUPPORTING DOCUMENTS:

N/A