



JOINING LITIGATION FOR FRANCHISE FEES

PH-18-014B

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Background for cable franchises

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- ❑ Cities traditionally grant franchises to utilities that use the rights-of-way.
- ❑ In 2005, the Texas passed legislation creating state franchising of cable providers.
- ❑ Texas law says that cable providers must pay cities a franchise fee of 5% of defined gross revenues, with some exclusions.
- ❑ Spectrum has a franchise in Killeen.

Preliminary Work

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- The city was contacted in May 2017 by the law firm of Lloyd Gosselink about potential underpayment of cable franchise fees by Spectrum.
- In June 2017, the city and 32 other cities contracted with NewGen Strategies to audit cable franchise fee returns.
- The audit estimates that Killeen was underpaid \$151,486 by Spectrum since 2013.

Litigation Goals

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- Recover underpayment of franchise fees
- Establish a proper method for accounting for these fees going forward

Litigation Budget Estimates

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- Trial budget -- \$375,000
 - ▣ Additional \$45,000 for court of appeals (if any)
 - ▣ Additional \$45,000 for Supreme Court (if any)
- Fees are divided among 33 cities in proportion to the amount each city is owed
- Total owed to all cities: \$2,252,213.00
- Owed to Killeen: \$151,486.00 = 6.73%
- Killeen's estimated share of expenses: \$25,237.50

Variables

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- Litigation costs could increase if:
 - ▣ Not all 33 cities participate
 - ▣ Additional attorney time or experts needed for unanticipated defenses by Spectrum

- Litigation costs could decrease if:
 - ▣ Additional cities join (those with separate audits)
 - ▣ Case is resolved early

Recommendation

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- It is believed the cities have a strong case, but it is by no means a guaranteed victory.
- Staff recommends that the City Council authorize joining litigation against Spectrum to recover underpayment of cable service franchise fees.