



Recommendation for Action

File #: 23-1529, **Agenda Item #:** 38.

3/23/2023

Posting Language

Authorize the execution of a settlement agreement with Spectrum Gulf Coast, LLC settling all claims of the parties in City of Allen, Texas et al., v. Time Warner Cable Texas, LLC d/b/a Spectrum and Charter Communications, Case No. 6:19-cv-345-ADA-DTG.

Lead Department

Law Department.

Fiscal Note

This item has no fiscal impact.

For More Information:

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Additional Backup Information:

In 2020, the City joined a suit with several other Texas cities* seeking Spectrum's (formerly, Time Warner Cable) compliance with Chapter 66 of the Texas Utilities Code regarding franchise fee calculation. Audit findings determined that franchise fee payments were likely being undercalculated due to the methodology Spectrum had been using to determine its gross revenue. Cable providers are required under Chapter 66 to pay municipalities 5% of their gross revenue from service provided in the municipality as well as an additional 1% of gross revenue to pay for capital costs for public, educational, and governmental (PEG) video programming. Specifically related to Austin was an additional claim that subscriber addresses were being miscoded to other jurisdictions for the purpose of calculating the fee due to Austin, resulting in an underpayment of Austin's fee.

After lengthy and contentious discovery and a ruling in a parallel San Antonio case adverse to the cities' argument regarding the inclusion of advertising revenue in gross cable revenue, the parties reached a settlement.

The settlement ensures that for the next 10 years, Spectrum's methods of calculating revenue for the purpose of calculating Austin's franchise fees during that period will give an estimated benefit to the City of \$1.5 million. This benefit is not in the form of a cash payment but rather an agreement that Spectrum agrees to forego a claim to pay Austin a lower amount by counting certain categories of revenue in full as gross revenues: FCC user fees, PEG fee revenues, and franchise fee revenues. The settlement also establishes an updated process for annual street address validation that employs a verifiable methodology using Spectrum's list of serviceable addresses for all zip codes that include the City of Austin, and City boundary information from the U.S. Census Bureau TIGER Database.

Staff recommends that the City Council authorize execution of the settlement.

* The city parties include Allen, Arlington, Austin, Bedford, Belton, Burleson, Carrollton, Cedar Hill, Colleyville, Coppell, Dalworthington Gardens, Euless, Fort Worth, Garland, Grand Prairie, Harker Heights, Hurst, Hutto, Irving, Killeen, Lewisville, Mesquite, Rockwall, Rowlett, Waco, and Wichita Falls.

Strategic Outcome(s):

Government that Works for All.