

City of Coral Gables City Commission Meeting
Agenda Item J-1
November 12, 2019
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Vince Lago
Commissioner Pat Keon
Commissioner Michael Mena
Commissioner Jorge Fors

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia

Public Speaker(s)

Gary Resnick

Agenda Item J-1 [10:56:30 a.m.]

Discussion regarding joining challenge to FCC Franchise Fee Order

Mayor Valdes-Fauli: Next item is time certain 10:30 a.m., and its J-1, discussion regarding joining challenge to FCC Franchise Fee Order.

City Attorney Ramos: Mayor, Commissioners, I had discussed this briefly with each of you. There has been a ruling by the FCC that...particularly to the State of Florida because we don't allow Franchise Fees in the State of Florida. What we are asking essentially is to allow us to join an appeal filed by other municipalities to challenge this order, but I'd like Mr. Resnick to just give you a quick primer on what it is exactly we are asking you to do.

Mr. Resnick: Thank you Mayor and Commission, Gary Resnick. I've had the privilege of representing the City on communication matters for many years now. I wanted to make you aware and I've spoken to the City Attorney about this of an FCC order that affects the City in unique ways and affects Florida in unique ways, and I ask her consideration on whether to joining an
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appeal about this Federal Communications Commission order. On August 2, 2019, the FCC issued an order addressing what's known as in-kind services that is provided by cable operators to local governments. This order basically says that such in-kind services, free services, provided by the cable companies are now franchise fees under Federal Cable Act. And so, what we are talking about are the free services that cable companies provide to government buildings, schools, libraries, as well as your access channel. And Coral Gables has a robust and I think highly viewed access channel. You've actually won national awards for the programming airing on your access channel, so I thought you should know about this and at least make a decision as to how you want to move forward. There are two issues with the FCC order. It provides, as I indicated, that these in-kind services are franchise fees, as the City Attorney mentioned, got rid of franchise fees and actually prohibit cities from receiving franchise fees by statute. So, under Florida Statute your access channel may be prohibited for free, as well as these other free in-kind services that the City currently receives. Your access channel is carried, by the way, on Comcast and AT&T U-verse throughout the City to its subscribers without charge. The other aspect of the FCC order that is particularly interesting and something that we need to challenge on appeal, it says that it preempts and consistent State Statutes. So even though Florida Law prohibits franchise fees, Florida Statute still provides notwithstanding the prohibition on franchise fees, local governments can require and reclass access channels and other in-kind services. That could be preempted by the FCC, because they didn't want to allow, they actually stated this in the order, they didn't want to allow state having end run. So, for example, if Maryland were to enact a statute that says, notwithstanding the FCC order, that these in-kind services are franchise fees, we are requiring cable operators to provide access channels and in-kind services for free, the FCC order indicates that that kind of statute would be preempted, that's exactly what Florida Statute provides. So, the bottom line is that the City may lose the free coverage of its access channel on Comcast and U-verse, AT&T U-verse, as well as the free services the government buildings, schools and libraries if the order is upheld. The order is being challenged, there are many like myself around the country who think its inconsistent with the Cable Act, this whole federal law, and now the FCC order is actually arbitrary and capricious and a violation of a lot of federal laws. So, it's being challenged by numerous local governments around the country. It has a unique impact on Florida statutes though because we are the only state that prohibits franchise fees. You are not receiving franchise fees, instead Florida created a communication services tax to replace franchise fees. We don't think that the order will impact the Commission Services Tax, which is a significant source of revenue to the City and all of the elements in Florida. But we have reason to believe that the cable industry will use the FCC order if its upheld to go to legislature and get changes in the statute to basically eliminate the access channels and the other free services that they are providing. They tried to do that in the 2019 session and we called them on it and asked, are you trying to get rid of access channels, so we sort of limited the language that they were able to get into the Bill that passed, but we think that that's their end run. We haven't had official word from Comcast or AT&T what they intend to do as a result of this order, but they pushed for it throughout the FCC process and

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actually are opposing a stay of the FCC order, so we can get the cable industry is going to do whatever it can to implement it. So, there are some policy questions for you here. So the policy question is, do you want to continue to be able to receive your access channel for free or would you consider streaming your meetings and other programming on the website, in which case you can eliminate your access channel, you wouldn't be affected if you lose it, or would you want to pay for it. We don't know what the cost would be. The FCC said that local governments should have to pay the fair market value of cost, the fair market value on the services that they are obtaining currently for free from the cable companies, and so we don't know what those costs would be to the City or to local governments in Florida. And of course, you could just wait and see what the cable industry would do, but if the FCC order is upheld, we think that it would be tougher to fight it in the legislature to seek a Bill to amend it. So, we are here today to discuss and find out from the City Commission whether it wants to authorize moving forward joining the appeal filed by these other local governments. The appeal is currently pending in the U.S. Court of Appeals for the Ninth Circuit. It was filed in the D.C. Circuit and a few other circuits, but its been consolidated in the Ninth Circuit, which is actually what we want because the Ninth Circuit has precedent that favorable to us on this issue, and we think that there is good grasp...the FCC order was a 3-2 vote, its 5 Commissioners on the FCC; three are the President's Party and two are minority party. There was a 3-2 vote. The 2 actually stated in their decent that they think the FCC is acting illegally, inconsistent with the Cable Act and arbitrary and capricious. And the FCC actually cited the Florida Statutes in the order but didn't in the order address how the order would impact Florida, and so, that makes the order with respect to Florida arbitrary and capricious, which would give us good grounds for an appeal. I have been authorized to represent one other local government in Florida that has an access channel that's highly viewed and so, if you join the appeal with that other local government, the fees and costs would be spread between the cities that participate in the appeal. And I could answer any questions that you may have.

Mayor Valdes-Fauli: Any questions.

Commissioner Keon: I do have a question, because I'm not an attorney and I want to make sure that I understand what you said.

Mr. Resnick: This is a very complicated issue.

Commissioner Keon: I just want to make sure I understand what you said. You said that it was a ruling by the FCC. This is in conflict with the current Florida State Statutes.

Mr. Resnick: Correct.

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Commissioner Keon: The concern is that the cable companies will then go to the Florida Legislature and it will have to be in compliance with the FCC, so we would lose the access channel which is 77...

Mr. Resnick: The bottom line is that you might lose free channel of your access channel.

Commissioner Keon: So, you are currently appealing the FCC's decision or the ruling from the FCC and you are asking us if we want to join that appeal.

Mr. Resnick: Correct.

Commissioner Keon: That's what you said.

Mr. Resnick: That is absolutely correct.

Commissioner Keon: OK. Thank you.

Commissioner Fors: And if the FCC ruling is upheld, we'd have to pay for our...

Commissioner Keon: We would have to pay for, or we would have to do something. It would change how we do business with regard to that.

Mayor Valdes-Fauli: It would behoove us to join the appeal.

Commissioner Keon: I would think so too.

Mayor Valdes-Fauli: Do I hear a motion?

Commissioner Keon: I'll move to join the appeal.

Mayor Valdes-Fauli: Second?

Vice Mayor Lago: Second.

Mayor Valdes-Fauli: Will you call the roll please.

Commissioner Mena: Yes

Commissioner Fors: Yes

Commissioner Keon: Yes

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Vice Mayor Lago: Yes
Mayor Valdes-Fauli: Yes
(Vote: 5-0)

Mayor Valdes-Fauli: Thank you very much.

Commissioner Keon: Thank you Gary.

Vice Mayor Lago: Have a wonderful day.

Commissioner Keon: Thank you.

[End: 11:05:16 a.m.]