

# Agenda Report

TO: City Council  
FROM: City Manager  
SUBJECT: Charter Communications Franchise Fee Increase

DATE: April 5, 1999

## **RECOMMENDATION:**

It is recommended that the City Council adopt a resolution opposing Charter Communications' recent action that increased the franchise fee charged to cable TV subscribers to 5.75%, and requesting that Charter cease this practice.

## **BACKGROUND:**

On March 1, 1999, Charter Communications unilaterally raised the franchise fees it charges cable TV subscribers from 5.25% to 5.75% to cover the cost of franchise fees Charter pays the City for non-subscriber-related revenues, such as advertising and home shopping sales.

It is staff's opinion that this action by Charter Communications is unfair, deceptive, and borders on consumer fraud. The resolution requests that Charter rescind immediately its practice of passing fees related to non-subscriber revenues on to the city's cable television customers.

The following is a summary of the staff's evaluation:

Franchise fees are levied upon the gross revenues earned by cable companies. Although they may be passed through to subscribers, franchise fees are not a tax levied upon subscribers for use of the cable system. Consequently, Charter's intention to charge an increased franchise fee to all subscribers in each of the cities serviced by Charter for gross revenues earned by Charter including revenues derived from home shopping sales, advertising revenues and revenues obtained from sources other than the sale of cable programming services seems patently unfair.

All subscribers will be unduly subsidizing home shopping channel purchasers and cable advertisers who contribute to gross revenue, but totally avoid payment of any portion of the franchise fee. This allocation of the franchise fee to subscribers on a disproportionate basis would result in an unduly discriminatory assessment of the franchise fee which is prohibited under the Cable Communication Act and other laws.

Since gross revenues include monies paid to Charter from home shopping sales and advertiser charges, Charter is obligated to pay to the respective cities,

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franchise fees on those revenues. That obligation by Charter does not translate into an entitlement for Charter to collect from those subscribers who do not benefit.

Further, since cable rates are based in part on Charter's cost of doing business, subscribers would be billed twice, once for the cost of programming and overhead and a second time for revenues derived from home shopping purchases and advertiser fees.

Charter has an obligation to correctly attribute the franchise fees to the appropriate revenue source(s). In other words, the cable operator can and should find a way to allocate franchise fees to home shopping purchases and to advertiser fees the company receives. We suggest fees be billed to home shopping channels and to advertising firms to recoup franchise fees due to the cities.

Information that Charter has provided to cable TV subscribers regarding the franchise fee increase implies that the city raised the fee, and is at the root of higher consumer costs for cable TV service. In fact, the city has taken no action to change the franchise fees charged customers. Staff believes that cable TV subscribers are being misled and the city's relationship with its constituents is being damaged. Charter should correctly disclose to its subscribers precisely what Charter is doing - requiring subscribers to subsidize the franchise fee cost which should properly be charged to home shopping channels and cable advertisers.

Should Charter be found to have acted unlawfully in this matter and have to reimburse its subscribers for the disproportionate overcharge of the franchise fee, staff strongly believes Charter should be prohibited from passing through to subscribers the obligation to refund those monies.

**FISCAL IMPACT:**

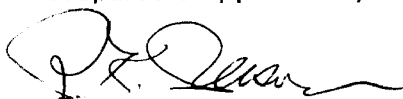
There should not be any fiscal impact to the City. Staff is simply suggesting that Charter Communications assess the appropriate parties their fair share of the 5% franchise fee.

Respectfully submitted,



CYNTHIA J. KURTZ  
City Manager

Prepared & Approved By:



ROBERT K. PERSON  
Chief Information Officer