

# Mayor and Council Communication

DATE: 02/28/23

M&C FILE NUMBER: M&C 23-0171

LOG NAME: 21SPECTRUMSETTLEMENT

## **SUBJECT**

(ALL) Authorize Execution of Settlement Agreement in Cause No. 6:19-CV-345-ADA-DTG, *City of Allen, Texas et al., v. Time Warner Cable Texas, LLC d/b/a Spectrum and Charter Communications*, for Resolution of All Claims Associated with the Recovery of Unpaid Franchise Fees Owed to Fort Worth

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## **RECOMMENDATION:**

It is recommended that the City Council:

1. Authorize execution of settlement agreement in Cause No. 6:19-CV-345-ADA-DTG, *City of Allen, Texas et al., v. Time Warner Cable Texas, LLC d/b/a Spectrum and Charter Communications*, for resolution of all claims associated with the recovery of unpaid franchise fees owed to Fort Worth; and
  2. Authorize the appropriate City personnel to execute all releases and agreements necessary to complete the settlement.
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## **DISCUSSION:**

In June 2017, City of Fort Worth (City) hired NewGen Strategies & Solutions (NewGen) to conduct a review of the City's cable services franchise fee payments from Spectrum. NewGen found that Spectrum underpaid the City and many other Cities in Texas the full amount of franchise fees owed to each City. In 2018, the City adopted a resolution authorizing the hiring of Lloyd Gosselink Rochelle & Townsend P.C. to file lawsuit on behalf of the City and other affected Cities against Spectrum to recover unpaid franchise fees.

In October of 2022, the parties entered into non-binding mediation in an attempt to settle the lawsuit. As a result of the mediation, the parties agreed to a settlement. The general terms of the settlement are as follows:

- Cities and Spectrum will mutually release all claims and demands against each other regarding Public, Education, and Government (PEG) fees and franchise fees, including all claims that could have been made about past franchise fee payments;
- For the next ten years the parties will be bound by an agreed methodology on how franchise and PEG fees would be calculated and paid to the Cities;
- Cities could not challenge agreed methodology during that ten year period but could review specific business records to ensure compliance with the agreement;
- No money shall be due and payable or owed to either party under the settlement agreement, except those franchise fees in the future;
- Parties will bear their own attorneys' fees and costs incurred in the litigation.

Under the terms of the settlement agreement, the City's estimated net benefit is approximately \$617,014.00. The City will not immediately receive payment of the estimated net benefit. Rather, the City's estimated net benefit will be paid by Spectrum through its franchise fee and PEG fee payments to the City over the ten-year term of the settlement agreement.

The City recommends that City Council authorize the execution of the proposed settlement agreement in cause No. 6:19-CV-345-ADA-DTG, *City of Allen, Texas et al., v. Time Warner Cable Texas, LLC d/b/a Spectrum and Charter Communications*, for resolution of all claims associated with the recovery of unpaid franchise fees owed to Fort Worth, and authorize the appropriate City personnel to execute all releases and agreements necessary to complete the settlement.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

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## **FISCAL INFORMATION / CERTIFICATION:**

The Director of Finance certifies that upon approval of the above recommendations and execution of the settlement agreement, funds will be deposited into the General Fund. The Financial Management Services Department is responsible for the collection and deposit of funds due to the City.

**Submitted for City Manager's Office by:** Dana Burghdoff 8018

**Originating Business Unit Head:** Steve Cooke 5134

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Expedited