



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Join in Amicus Brief in the case of Charter Communications, Inc. v. County of Santa Cruz, 9th Circuit Court of Appeals.

MEETING DATE: August 15, 2001

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: That the City join the Amicus Brief in the case of Charter Communications, Inc. v. County of Santa Cruz, 9th Circuit Court of Appeals.

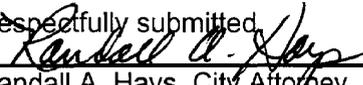
BACKGROUND: Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

The Board of Directors of the League of California Cities upon the recommendation of its Legal Advocacy Committee is urging local communities to participate in this amicus effort.

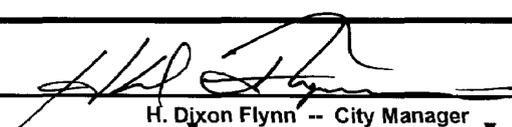
This case involves the extent of authority given to local jurisdictions to review the transfer of cable television franchises. In this particular case, the court has extremely limited the opportunities available to a local franchising authority to review the transfer of a cable television franchise. This particular case represents a further inroad to local government's ability to deal with a service, which uses the local jurisdictions rights-of-way in order to provide a service. There has been for some time a concerted effort at the Federal level to work to limit local jurisdictions authorities in this area. This particular case involves the interpretations of some of the Federal legislation that has been put into place in the last few years. The case calls into questions one particular practice which local jurisdictions have utilized in order to provide the necessary transfer review. That procedure has been to cause the cable operator to bear the cost of the review incurred by the local franchising authority. In this case, in addition to awarding the cable company legal fees approaching a million dollars, the Court found that the cost associated with the review fell under the five percent (5%) Federal cap allowable as a cable franchise fee. This decision therefore would cause, in those jurisdictions that require the franchise operator to pay the review costs, a reduction of the franchise fee available to the local community. What is developing through the Federal law and court decisions of this type is private enterprise being given a free ride in the utilization of public property in order to provide a for profit service to people in the community. It appears to be good public policy to try and do everything that is possible to have those who seek to make private gain by the utilization of public property to appropriately bear the costs of the use of that public property in order to secure that private gain.

Funding: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager