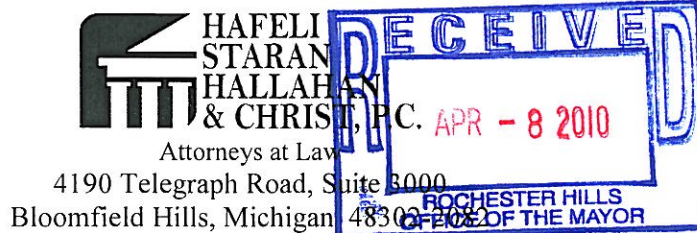


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April 6, 2010

Mayor Bryan K. Barnett
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309-3033

Re: Community Media Network / ICCA

Dear Mayor Barnett:

You have asked for my input on several questions relating to the City's relationship with and funding of CMN and ICCA and issues associated with terminating those relationships.

Q: May the City suspend or terminate participation in or funding of CMN?

A: Yes. The City does not contract directly with CMN. Rather, CMN has a contract (copy enclosed), dated September 26, 2007, with ICCA to provide PEG services for the ICCA communities. That contract runs through December 31, 2012. Basically, the CMN/ICCA contract provides that the ICCA communities are either "Eligible" or "Ineligible" to utilize CMN's services and facilities depending on whether the ICCA community provides funding to CMN or not. If the community does not provide funding, then the community and its residents are not eligible to use CMN's services and facilities. Consequently, if the City desires to terminate funding of CMN, there is no penalty or contract violation. Rather, that will simply result in discontinuation of use of CMN's services and facilities.

Q: If the City discontinues funding of CMN, what may the City, instead, use those funds for?

A: The source of the funding to CMN has been the PEG access fees received by the City from the cable operators. Under federal law and the applicable cable franchise agreements, the City receives from the cable operators a franchise fee of 5% of the cable operators' revenues, plus another 1% for PEG access, since the cable providers themselves do not provide PEG access. The City, at one time, contributed the entire 1% to ICCA for turning over to CMN. Later, the City suspended such funding. Later still, the City Council restored funding at the ½% level, where it has remained ever since without revisitation by City Council.

There are restrictions on what the PEG access fees received from cable operators can be used for. The Federal Communications Commission has taken the position that under federal law, PEG fees may only be used for the capital costs incurred for PEG access facilities. This

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position was challenged in federal court and was upheld by the US Court of Appeals in *Alliance for Community Media v Federal Communications Commission*, 529 F3d 763 (6th Cir 2008). Last year, the U.S. Supreme Court denied a request to hear an appeal of that decision, so it stands as "the law." What this means is that PEG fees collected from cable operators may only be used for capital costs incurred for PEG facilities (i.e., studios) and equipment associated with construction of a studio. PEG fees cannot be used or expended for programming, production, operations or other equipment costs.¹

Q: Might the City face a legal challenge if it discontinues funding of CMN?

A: As stated above, the City has no direct contract with CMN and may terminate its relationship with and funding of CMN without penalty. Similarly, the City has no agreement with ICCA that requires the City to continue funding CMN. Therefore, I believe a legal challenge is unlikely.

Q: Can the City withdraw from ICCA?

A: Yes. ICCA's original purpose was to consolidate and coordinate the negotiation of franchise agreements with cable operators to provide economies, efficiencies and collective bargaining power to the member communities. ICCA has also been instrumental in dealing with franchise transfers and other franchise issues. At one time, ICCA served as the liaison and clearinghouse for cable service issues. More recently, though, ICCA's role has diminished and ICCA has been less active in cable affairs except for its dealings with and oversight of CMN. Under the current intergovernmental agreement governing ICCA, a member municipality may withdraw from ICCA upon 60 days advance notice of withdrawal mailed to ICCA. After the effective date of withdrawal, the withdrawing community ceases to be a member and loses all benefits of membership, except that the withdrawing member will be entitled to its proportionate share of any funds or assets held by ICCA for the benefit of its members.²

Very truly yours,


John D. Staran

JDS/ijd
Enclosure

cc: Jamie Smith

¹ Indeed, among the concerns expressed is that when the City pays the funds over to ICCA to be passed on to CMN, there is no limitation on the purposes CMN may use the funds for.

²This does not include funds or assets held by ICCA to finance ICCA's operations, which funds are deemed to be for the benefit of ICCA, not its members.