



Legislation Text

File #: 13-0455, **Version:** 2

TO:

Honorable Mayor and Members of the City Council

THROUGH:

David N. Carmany, City Manager

FROM:

Quinn M. Barrow, City Attorney

SUBJECT:

Follow-Up Report on Satellite Dishes.

RECEIVE AND FILE

RECOMMENDATION:

Staff recommends that the City Council receive and file this report.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with this action.

BACKGROUND:

This agenda item was pulled from the Consent Calendar at the September 3, 2013 City Council meeting and continued to the September 10, 2013 Adjourned Regular City Council meeting.

After considering a report on satellite dishes at the May 7, 2013 meeting, the City Council requested that the City Attorney's Office research whether the City may request an advisory opinion from the Federal Communications Commission (FCC) regarding the validity of proposed regulations related to satellite dishes. The City Council also asked for additional information regarding the FCC's consideration of existing regulations in the cities of Philadelphia and Chicago.

DISCUSSION:

The FCC Does Not Issue Advisory Opinions regarding Pending Local Regulations

The City Attorney's Office contacted the Administrative Law Division of the FCC's Office of General Counsel. We inquired as to whether there was a process for requesting an advisory opinion regarding the validity of local regulations related to satellite dishes. Deputy Associate General Counsel, Marilyn Sonn, informed us that the only procedures that exist are those that allow someone to petition to challenge a specific restriction regarding satellite dishes. Part 1 of Subchapter A, Chapter 1, of Title 47 contains the "Practice and Procedure" regulations for the FCC. The Commission may "issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R. § 1.2(a). This process for requesting a declaratory ruling applies only to existing - not proposed - regulations.

According to Ms. Sonn, if a city has questions about a proposed regulation, the entity may contact the FCC's "Media Bureau" to seek informal advice on a proposed regulation. We have not located any specific procedures in the Code of Federal Regulations for requesting such advice. In addition, given the uncertainty of the OTARD Rule (due to the cases pending before the FCC) and the satellite industry's request for revisions to the OTARD Rule, it is unlikely the Media Bureau would issue informal advice on a proposed regulation.

Pending Decisions relating to Ordinances in Chicago and Philadelphia

In November 2011, the Satellite Broadcasting & Communications Association ("SBCA") challenged the City of Philadelphia's ordinance regulating satellite dishes and antennas. In April 2012, the FCC's Media Bureau issued Public Notice DA 12-663, informing the public that the SBCA filed a petition for a declaratory ruling asking the FCC to determine whether a Chicago ordinance related to the installation of satellite dishes was preempted by the OTARD Rule. According to the notice, the Chicago ordinance sought "to limit installation of satellite dish antennas that are visible from the street adjacent to the property and between the building façade and the street."

In May 2012, DirectTV, the SBCA, and the City of Chicago filed a joint motion with the FCC to stay the public comment period related to the Chicago ordinance until after the Commission renders a decision in the similar proceeding involving the City of Philadelphia. In the meantime, the SBCA petitioned the FCC to amend the OTARD rule to expressly limit state and local governments' ability to regulate installations of satellite dishes.

The FCC has not yet issued a ruling in any of the above-mentioned cases.

CONCLUSION:

Staff recommends that the City Council receive and file this report.