TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: August 9, 2005
SUBJECT: Cable Franchise Lawsuit Against the City of Troy

The City of Troy was one of thirteen defendants served with a lawsuit challenging the cable franchise fees as an illegal tax. The other municipalities include Ann Arbor, Canton Township, Grand Rapids, Kalamazoo, Livonia, Midland, Muskegon, Plymouth Township, Royal Oak, St. Clair Shores, Warren and Westland. **Eight** of the individual circuit court judges dismissed the lawsuit in against the following jurisdictions: Ann Arbor, Canton Township, Grand Rapids, Livonia, Muskegon, St. Clair Shores, and Westland. The Plaintiffs voluntarily dismissed the Plymouth Township case, and Warren settled their case. Although the remaining three jurisdictions (**Troy,** Royal Oak, and Midland), had filed motions for dismissal, the circuit court judges stayed these cases to wait for a decision in the Michigan Court of Appeals, since the Plaintiffs appealed each of the eight dismissals. These three cases will now likely be dismissed, based on the recent decisions of the Michigan Court of Appeals.

The eight cases were not consolidated at the Court of Appeals, but were heard on the same day. Although the circuit court judges based their dismissals on different reasons, the Michigan Court of Appeals affirmed the dismissal of all eight cases on two separate grounds. Extensive briefs were filed in all of the cases, and the Michigan Municipal League filed an amicus brief in support of the municipal position. Although the briefs raised several justifications for dismissal, the Court affirmed the dismissal based on the statute of limitations preclusion in seven of the cases. The Court held that the lawsuit was not filed within one year of the execution of the cable franchise agreements, as required by MCL 600.308(a)(3). The statute of limitations defense was not available in the eighth case, since Livonia followed a different procedure in the circuit court. However, the Court of Appeals was consistent in relying on the one- year limitation, when it held that Livonia's revenue from the franchise fee in the one- year prior to the filing of the lawsuit was not disproportionate to the expenses for cable in that same year, and therefore the cable franchise fee was not a tax.

It is likely that the Plaintiffs will ask the Michigan Supreme Court to review the Court of Appeals decisions. I will keep you updated as to any applications for leave to appeal that are filed on behalf of the municipalities. If you have any questions, please let me know.

CC: Cable Advisory Board