

**Weiss Serota Helfman
Pastoriza Cole & Boniske, P.A.**

MEMORANDUM

To: Mayor and Village Council, Village of Key Biscayne

From: Gary I. Resnick, Village Attorney
Scott A. Robin, Village Attorney

cc: Jacqueline Menendez, Village Manager
Stephen Helfman, Village Attorney

Date: October 5, 2005

Re: Resolution Urging Congress to Oppose Federal Legislation

This Memorandum summarizes the attached proposed Village of Key Biscayne, Florida (“Village”) Resolution, which urges Congress to oppose federal legislation that i) creates a national video franchising process that preempts the Village’s ability to require a local franchise agreement from telephone and cable companies who seek to provide video services in the Village; ii) extinguishes existing cable franchises and licenses; and iii) restricts the authority of local governments to provide communications services. Approval of the proposed Resolution authorizes the Village Clerk to forward this Resolution to the Florida Congressional Delegation, other members of Congress and the National League of Cities to oppose such federal legislation.

Background

The two largest telephone companies, SBC and Verizon, have announced their intent to offer video services and are seeking federal legislation, potentially as part of the rewrite of the federal Communications Act, which restructures the local franchising process. H.R. 3146 and S. 1349 were filed in the U.S. House of Representatives and U.S. Senate, respectively, which create a national cable/video franchise, thus bypassing the local franchising process. Additionally, S. 1504 titled the “Broadband Investment and Consumer Choice Act” was filed in the U.S. Senate that prohibits state and local governments from requiring a franchise or license for the provision of video services, extinguishes existing cable franchises and licenses, and restricts the authority of local governments to provide communications services.

If you have any questions, please do not hesitate to contact us.

RESOLUTION NO. 2005-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAWAYNE, FLORIDA URGING CONGRESS TO ENSURE MUNICIPAL AUTHORITY TO REQUIRE LOCAL FRANCHISES FOR THE PROVISION OF VIDEO SERVICES WITHIN ITS JURISDICTION, TO PROTECT EXISTING CABLE FRANCHISES AND CABLE FRANCHISING AUTHORITY, AND TO PROTECT MUNICIPAL AUTHORITY TO PROVIDE COMMUNICATIONS SERVICES, AND DIRECTING THAT THIS RESOLUTION BE FORWARDED TO THE FLORIDA CONGRESSIONAL DELEGATION, OTHER MEMBERS OF CONGRESS, AND TO THE NATIONAL LEAGUE OF CITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, current law requires cable television operators to obtain a local franchise agreement from cities before a cable television operator offers video services to its residents; and

WHEREAS, the obligation to obtain a local franchise to provide video services stems both from inherent local government authority over the use of rights-of-way and from the federal 1992 Cable Act, Title VI; and

WHEREAS, Adelphia Communications Corporation through its subsidiary Key Biscayne Cablevision, currently owns, operates, and maintains a cable television system and provides cable service to the residents of the Village of Key Biscayne (“Village”), pursuant to a License Agreement entered on November 14, 2001, with the Village; and

WHEREAS, Chapter 8AA, Article I of the Miami-Dade County Code, provides for the issuance and regulation of cable television licenses for, and the installation, construction and operation of, cable television systems within the Village; and

WHEREAS, the two largest telephone companies, SBC and Verizon, have announced their intent to offer video services; and

WHEREAS, these companies are seeking federal legislation, potentially as part of the rewrite of the federal Communications Act, which restructures the local franchising process and creates a national video franchise permitting telephone companies to offer video programming in cities without obtaining a local franchise agreement; and

WHEREAS, cities should have the authority to negotiate and enforce local franchise agreements to obtain needed services, including institutional networks and the provision of Public, Educational and Government (PEG) access channels, which cities can use to provide messages and important information to their residents; and

WHEREAS, cities should have the authority to provide communications services, including internet, cable and telephone services, for the benefit of local residents and economic development purposes without undue interference from the federal or state governments; and

WHEREAS, H.R. 3146 has been filed by U.S. Representatives Marsha Blackburn (Tennessee) and Albert Wynn (Maryland) and S. 1349 by U.S. Senators Gordon Smith (Oregon) and Jay Rockefeller (West Virginia) that would create a national cable/video franchise, thus bypassing the local franchising process; and

WHEREAS, U.S. Senators John Ensign (Nevada) and John McCain (Arizona) filed S. 1504 titled the "Broadband Investment and Consumer Choice Act" that prohibits state and local governments from requiring a franchise for the provision of video services, extinguishes existing cable franchises, and restricts the authority of local governments to provide communications services; and

WHEREAS, for these reasons, the Village Council of the Village of Key Biscayne finds that it should oppose this proposed legislation and urges the Florida Congressional Delegation, other members of Congress and the National League of Cities to oppose such proposed legislation; and

WHEREAS, the Village Council finds that it would be in the public interest to forward this Resolution to the Florida Congressional Delegation, other members of Congress and to the National League of Cities.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA THAT:

Section 1: The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon its adoption.

Section 2: That the Village Council of the Village of Key Biscayne opposes federal legislation that creates a national video franchising process preempting the Village from requiring a local franchise agreement from telephone companies to provide video services in the Village, extinguishes existing cable franchises and licenses and restricts the authority of local governments to provide communications services.

Section 3: That the Village of Key Biscayne urges members of Florida’s Congressional Delegation, other members of Congress and the National League of Cities to oppose this legislation and protect the Village’s local franchising authority over video services and its ability to provide communications services.

Section 4: The Village Clerk is hereby directed to immediately distribute this Resolution to the Florida Congressional Delegation, other members of Congress and the National League of Cities.

Section 5: Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this ___ day of _____, 2005.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY