Council Communication Office of the City Manager	**Date**	May 31, 2006
	Agenda Item No. **Roll Call No.** <u>**06-**</u> **Communication No.** <u>**06-315**</u> **Submitted by: Richard A. Clark, City Manager**	

AGENDA HEADING:

Approving and authorizing the Mayor to sign letters to (1) the Iowa delegation of the U.S. House of Representatives regarding opposition to H.R. 5252, the Communications, Promotion and Enhancement Act of 2006 (COPE) and (2) to the Iowa delegation of the U.S. Senate regarding opposition to S. 2686, the Communications, Consumer's Choice, and Broadband Deployment Act of 2006.

SYNOPSIS:

H.R. 5252, the Communications, Promotion and Enhancement Act of 2006 (COPE), which was approved by the House Energy and Commerce Committee on April 26, 2006, is now being discussed on the floor of the U.S. House of Representatives. Among other harmful elements, this bill would nationalize cable franchising, limit the city's ability to manage its own right-of-way, and allow video providers to serve only areas of the city they wish (no universal service requirement).

S. 2686 would strip local communities' franchising authority and grant it to the Federal Communications Commission (FCC). Furthermore, it fails to keep local governments financially whole by decreasing franchise fee revenue. The bill would also allow providers to choose the neighborhoods they want to serve while bypassing others completely.

This action authorizes the Mayor, on behalf of the City Council, to write letters to members of Iowa's congressional delegation expressing the City's opposition to both H. R. 5252 and S. 2686

FISCAL IMPACT: NONE

<u>Amount</u>:

<u>Funding Source</u>:

ADDITIONAL INFORMATION:

The current version of H.R. 5252, the Communications, Promotion and Enhancement Act of 2006 (COPE), attempts to accelerate video competition across the country by stripping cities of their franchise powers and transferring them to the Federal Communications Commission (FCC). In addition COPE would:

- Effectively void existing cable franchises because the current franchise holder can choose the national franchise as soon as a competitor serves just one customer in Des Moines;

- Allow video service providers to engage in customer redlining because there is no requirement to fully build out a franchise area or to provide the same services to the whole city. COPE would allow companies to provide "light speed" service to the wealthy and "snail speed" service to everyone else. Some telephone companies have already announced plans to build different levels of services in different areas, and they have claimed that this redlining is essential for them to enter the market.

- Grant the FCC ultimate oversight authority to decide what local regulatory requirements may be imposed upon entities that dig up streets for their private financial gain;

- Send citizen complaints to the FCC for resolution. The FCC would require a massive increase in staffing and budget to handle the volume of nationwide complaints.

- Fail to make communities whole on Public, Education, and Government (PEG) channels and I-Net support (the city's fiber optic network).

Key components of S. 2686 include the following:

- It strips local authority and grants it to the FCC to determine virtually all franchise terms by rulemaking, and it requires that a franchise be granted by force of federal law within 30 days of a broadband-video provider filing an application. A local franchising authority would have only 15 days to fill in its section of the application. If a local franchising authority misses any of these deadlines, the bill "federalizes" local video franchising and eliminates the 1 percent fee for public, educational and government (PEG) access channels used to carry local programming and appropriate institutional network obligations for government and emergency communications.

- It would send all rights-of-way disputes to the FCC, not the courts, which is the current practice. Communities, large and small, would be placed in the difficult position of reaffirming their rights-of-way management and practices before the FCC. The FCC has never had the authority to regulate local public rights-of-way and has no expertise concerning local streets, sidewalks, public safety and traffic patterns. Furthermore, if the provider wins, the local community would be required to pay the costs and attorneys fees of the broadband-video provider.

- It abandons commitments to keep localities financially whole in the rewrite of the video franchising process by excluding advertising and other non-subscriber revenues from the current 5% franchise fee. The pledge to keep localities financially whole would be further marginalized by preemption language that does not allow localities to conduct franchise fee audits.

- It allows providers of the broadband-video services to use the public rights-of-way in a community, but pick and choose which neighborhoods they wish to serve while bypassing all others completely.

PREVIOUS COUNCIL ACTION(S): NONE

Date:

Roll Call Number:

Action:

BOARD/COMMISSION ACTION(S): NONE

Date:

Roll Call Number:

Action:

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Ongoing communication with Iowa’s congressional delegation is anticipated.