K 19-18

CASE CLOSED

Date: 3-25-19

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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AGENDA ITEM COVER MEMORANDUM

TO: Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director

SUBJECT: County Contract Lobbyist Waiver Request of Diana Ferguson (Rutledge Ecenia) on behalf of T-Mobile (*Corrected Copy*)

DATE: March 22, 2019

Pursuant to Resolution R-1017-10, the attached County contract Lobbyist Conflict Waiver Request* received from Diana Ferguson of the Rutledge Ecenia firm, together with the Commission on Ethics recommendation, investigative report and attachments, are forwarded to the Board for its consideration.

It is the recommendation of the Commission on Ethics that the waiver be denied.

The basis of the recommendation is that Senate Bill 1000 and House Bill 693 are local government preemption bills that seek to limit counties and municipalities from regulating Communication Services Taxes, Wireless Facilities and Utility Poles, and Permit Fees, by revising Sections 202.12, F.S.; 202.20, F.S; and 337.401, F.S.

Allowing Ms. Ferguson to lobby on behalf of T-Mobile in support of the above referenced bills would require Ms. Ferguson to take a position that is opposite to a position of County as contrary to the Board of County Commissioners' Guiding Principles for all County Lobbyists to defend the County against legislative acts of "preemption."

* Ms. Ferguson does not specifically ask for a lobbying conflict waiver but rather notices County staff and the County Attorney's Office that she has been directed by her client T-Mobile to support the two bills "in the event the County has any concerns with these bills."

From: Diana Ferguson [mailto:DFerguson@rutledge-ecenia.com]
Sent: Monday, March 18, 2019 6:53 PM
To: Rasco, Joe (OIA) <Joe.Rasco@miamidade.gov>
Cc: McCarty, Jess (CAO) <Jess.McCarty@miamidade.gov>; Gonzalez, Alina M. (OIA) <Alina.Gonzalez@miamidade.gov>; Gary Rutledge <Gary@rutledge-ecenia.com>; Jon Costello <Jon@rutledge-ecenia.com>
Subject: SB 1000/HB 693

Joe,

Our client, T-Mobile, has directed us to support SB 1000 by Senator Hutson and HB 693 by Representative Fischer. We wanted to make you aware of this in the event that the County has any concerns with these bills.

Thanks,

Diana

Diana Ferguson, Esq.
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Rutledge | Ecenia

Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: K19-18	**Case Name:** Rutledge Ecenia/ Diana Ferguson, et al.	**Date Open:**	**Date Closed:**
Complainant(s):	**Subject(s):** Lobbyists Diana Ferguson, Gary Rutledge, Jon Costello	March 20, 2019	March 25, 2019

Allegation(s):

In an email dated March 18, 2019, Diana Ferguson – County contract lobbyist employed by Rutledge Ecenia – contacted the County's Intergovernmental Affairs Office (OIA) and self-reported a potential conflict of interest involving its representation of the County and another client, T-Mobile USA Inc. (hereinafter "T-Mobile"). The email from Ms. Ferguson noted that T-Mobile had instructed Rutledge Ecenia to support legislation in possible conflict with positions held by Miami-Dade County – specifically, Senate Bill 1000 and House Bill 693.

Accordingly, the matter was referred to COE for review and a recommendation.

Relevant Ordinances:

As required by Miami-Dade County Ordinance No. 00-64, "... no person or entity that received compensation from the County for lobbying on behalf of the County or any of its agencies or instrumentalities at either the state, national or municipal level shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board (of County Commissioners) grants a specific waiver for specific lobbying activity."

Resolution No. R-632-10, adopted by the Board of County Commissioners in June 2010, further authorizes COE to "conduct conflict of interest checks related to County contract lobbyists and provide to the board a report and recommendation on any ... conflict of interest."

Investigation:

Interviews

On March 19, 2019, Assistant County Attorney Jess McCarty was consulted via email with respect to the legislation supported by T-Mobile (SB 1000 and HB 693) and McCarty advised that it was viewed as potentially preempting Miami-Dade's authority as a home rule County, meaning that the bills could therefore could be considered in conflict with the County's position that its contract lobbyists should oppose all attempts at preemption.

On March 21, 2019, a follow-up telephone conference was held with ACA McCarty, COE Executive Director Jose Arrojo, and this Investigator. ACA McCarty reiterated his prior comments and confirmed that he had assigned other members of the County's contract lobbyist team to oppose the above referenced bills.

Opposing preemption considering a "Guiding Principal" for all County lobbyists

Defending the County against acts of "preemption" by special interests was listed among the "Guiding Principles" in directives issued to the County's contract lobbyists. Responsibility for identifying and opposing all such transgressions was assigned to the entire County "team." This and other "Guiding Principles" were articulated in a Jan. 11, 2019, email from ACA McCarty to all Miami-Dade County contract lobbyists. Among those copied on the email were Gary Rutledge, Jon Costello and Diane Ferguson of the firm Rutledge Ecenia. A copy of the January 11 email and attached "Master List for Lobbying Team" was added to the file.

County lobbyists cautioned to look at all assigned items for possible conflicts

On or about March 14, 2019, ACA McCarty sent an email to all County contract lobbyists including those referenced above regarding an updated list of lobbyist assignments. Item No. 10 on that list was assigned to the firm Gray Robinson and related to the subject legislation – SB 1000 and HB 693, relating to "Communications Services Tax/ 5G/ Right of Way."

Even though the item was specifically assigned to Gray Robinson (hereinafter "Gray"), ACA McCarty reminded all members of the County's contract lobbyist team "to take a look at all assignments, even the ones not assigned to you, for possible conflicts."

This direction from ACA McCarty implies that any and all County lobbyists representing other clients supporting this legislation should have promptly notified the County.

A legislative update dated March 16, 2019, prepared by Assistant County Attorney McCarty and copied to the Office of the Mayor, members of the Board of County Commissioners (BCC) and other County staff advised as follows (Item No. 22):

SB 1000; HB 693: Communications Services Tax/Use of Right-of-Way/Permit Fees/5G Wireless Preemption

The Senate Innovation, Industry, and Technology recommended favorably SB 1000 by Senator Travis Hutson (R – Palm Coast) by vote of 9 yeas, 0 nays, after adopting an amendment. As amended, SB 1000 makes extensive changes to the law on use of rights-of-way, including provisions on small and micro wireless infrastructure. These changes include:

Prohibiting a local government permitting authority from instituting, either expressly or de facto, a moratorium or other mechanism that would prohibit or delay permits for collocation of small wireless facilities or related poles.
Deleting authority for a local government to require performance bonds and security funds and allowing them to require a construction bond limited to no more than 1 year after the construction is completed;
Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.;
Creating a civil cause of action for any person aggrieved by a violation of the right-of-way statute in a U.S. District Court or in any other court of competent jurisdiction for a temporary or permanent injunction and recovery of full costs and reasonable attorney fees to a prevailing aggrieved party; and
Allowing a provider of communications services to add a permitting authority to any existing bond, insurance policy, or other financial instrument, and requiring the authority to accept such coverage.

Cities and counties that, as of January 1, 2019, were not imposing permit fees cannot reverse this election and cannot impose permit fees. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees. The bill retains existing provisions on fees and changes to elections applicable only to this latter group. SB 1000 also reduces the state tax on general communications services from 4.92 percent to 3.92 percent, and on direct-to-home satellite services from 9.02 percent to 8.07 percent. SB 1000 has three committees remaining before it reaches the Senate floor. The House companion bill is HB 693 by Representative Jason Fischer (R – Jacksonville). HB 693 has not yet been heard in committee.

Additional information on SB 1000 can be found in the committee staff analysis:
http://www.flsenate.gov/Session/Bill/2019/1000/Analyses/2019s01000.it.PDF

The current version of SB 1000 is the committee substitute:
http://www.flsenate.gov/Session/Bill/2019/1000/BillText/c1/PDF

On March 20, an email was sent to Diana Ferguson of Rutledge Ecenia advising that COE had been asked to review her firm's conflict notice and advised that, based on a preliminary review, it appeared that Rutledge's representation of T-Mobile would present a conflict with the policy of Miami-Dade County to oppose all measures that seek "preemption." She was offered an opportunity to discuss this matter further with COE staff.

Document/Audio/Video Review:

A copy of the March 18, 2019, email from Diana Ferguson of Rutledge Ecenia regarding a potential conflict between the County and T-Mobile was added to the file. The email was sent to OIA Director Joe Rasco and copied to Assistant County Attorney Jess McCarty.

Copies of draft legislation (SB 1000 and HB 693) relating to the construction of infrastructure for newly developed cellular communication technology were obtained and added to the file.

Conclusion(s):

Based on the foregoing, it would appear that Rutledge Ecenia's dual representation of the County and T-Mobile would pose a conflict as it relates to pending legislation. SB 1000 and HB 693would preempt the County's home rule authority by restricting its ability to regulate telecommunication firms in the development of infrastructure along public rights-of-way.

Accordingly, it is recommended that no waiver be granted in this instance.

Karl Ross, COE Investigator

Approved by:

Michael Murawski, Advocate

3/25/19

Jose Arrojo, Executive Director