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Who's Watching MCTV?

Issue

Is the oversight of the chartering agencies over Mid-Coast Television (MCTV) adequate to ensure compliance with their contractual obligations?

Background

Mid-Coast Television (MCTV) is a small community access television station that serves the coastal communities located in San Mateo County. These communities include, El Granada, City of Half Moon Bay (City), La Honda, Montara, Moss Beach, Pescadero, and Princeton-by-the-Sea.

Founded in 1983, MCTV, a non-profit enterprise, was created through the lobbying of interested community members, the Cabrillo Unified School District, and the San Mateo County Board of Supervisors (County).¹

As defined by the Federal Communications Commission (FCC), MCTV is formally designated as a Public, Educational, and Governmental Access Services (PEG) Station, as well as a Community Access TV station.² MCTV's charter is issued through its local agencies to offer basic services in its service area. These services include, but are not limited to, locally created programming, educational programming, and programming focused on the functions of local government. MCTV has a governing board, management, staff, and, until April 30, 2009, dues-paying members.

MCTV reaches approximately 6,000 Comcast television (Comcast) subscribers of the 30,000 residents in its service area on cable Channel 6. MCTV can be viewed on cable TV or through internet access. Access to some MCTV programming through the internet has become an increasingly popular option for viewers.

MCTV programming consists of the following:

- Scheduled broadcast of recent public governmental meetings, covered in their entirety, and aired only once
- Archival footage of festivals and social events from the 1980s to the present

¹ MCTV 1983 Bylaws, dated November 1, 1983 (Attachment 1)

² FCC Fact Sheet on Public, Educational, and Governmental Access Channels <http://www.fcc.gov/mb/facts/pegfacts.html>

- Archival public service and special interest programming produced by MCTV from the 1980s to the present
- Educational and special interest shows produced by other organizations and acquired, at no cost, by MCTV
- Slideshows promoting local services, upcoming events, and other information while playing an audio overlay of varied musical genres
- Candidate debates, which are repeatedly aired during an election cycle for the convenience of the public

The majority of the content that is broadcast on MCTV is taken from archival and externally produced sources. On average, only 10% of what MCTV broadcasts during the week is recently produced programming, and the majority of that total is video of public governmental meetings.

MCTV makes the use of its video recordings of public government meetings available to members of the public who wish to post them on other websites. In the past, MCTV did not maintain a permanent archive of these recorded public meetings. As MCTV recently added increased server storage, it is now possible for older material to be made available on-demand through the MCTV website. However, most on-demand material is of archived social and educational content and not of recorded government meetings.

MCTV is now set up to provide web viewers with one-time live video streams of public meetings. However, MCTV agreed to make this material available on the web through video-on-demand with an extra fee to the subject agencies. MCTV claimed this fee as necessary to offset the additional effort and resources video-on-demand requires. Some agencies have opted not to pay the extra fee. As a result, not all public meetings are available through the MCTV web archive.

MCTV considers broadcasting material produced by others but rejects content it believes to be of inferior technical quality. On technical grounds, MCTV rejects all recordings of local government meetings conducted in its service area that are made by others. MCTV also rejects these recordings on the assumption that they may be selectively edited. In addition, MCTV does not broadcast any religious advocacy material as a matter of policy.

MCTV Contractual Obligations

MCTV is contractually bound to two agencies that share responsibility for the funding and local oversight of the station: the County and City. The County represents subscribers in the unincorporated communities, and the City represents subscribers within the incorporated City limits.

County³ and City⁴ Staff negotiated these contracts to specifically address:

- Franchise fees and capital revenues to the station
- The charter under which MCTV operates
- A minimum standard of PEG service
- Periodic reporting to the County and City

³ Agreement between San Mateo County and Mid-Coast Television, dated September 12, 1995 (Attachment 2)

⁴ Agreement between City of Half Moon Bay and Mid-Coast Television, dated July 22, 1998 (Attachment 3)

- Community training for the production of new programming
- The loan of equipment for the production of new programming

These agreements also contain clauses for automatic renewal of the MCTV contract without review. Under the agreement between MCTV and the County, each party to the contract has the right to terminate, with proper notice, the operating agreement. If this decision were made, the County could then be free to seek another entity to operate the PEG service. The City retains the same right in its contract with MCTV.

In 2006, the County and Comcast reached an agreement through the San Mateo County Telecommunications Authority (SAMCAT), a Joint Powers Authority (JPA) chartered under State law. The agreement provided MCTV with capital improvement funds, totaling approximately \$223,000, to be allocated over five years to upgrade the station's infrastructure. With the first SAMCAT payment, MCTV management purchased three servers with terabyte hard drives to increase archival capacity and camera upgrades. It also automated many of the station's operational functions, resulting in a substantial decrease in the amount of labor and time needed to operate the station.

While the agreements specify MCTV's contractual obligations, engaged oversight of MCTV's quality of community service or its Board governance is unspecified. While County staff carefully reviews all matters related to franchise fee and capital fund disbursements, no regular detailed audits of the station's quality of service to the community or surveys of viewer satisfaction are conducted. The 1998 MCTV agreement with the City calls for the development of a viewer survey as a tool for public feedback and MCTV improvement; however, no survey has been conducted. The agreements also call for the exploration of new funding sources; however, to date, the contribution of these sources to station revenue has been small.

MCTV Organization

The only full-time employee of MCTV is the President and Station Manager, who has served in that capacity since the station was founded in the early 1980s. With the exception of the President, the MCTV Board of Directors is uncompensated. As needed, the station uses volunteers and donated Board expertise for technical assistance. It offers modest compensation to the part-time camera operators who record public meetings.

Historically, the membership has voted for the MCTV Board and approved bylaw changes. The Board and the President approve operational policy. Daily decision-making is left to the President in the role of Station Manager.

MCTV Revenue

MCTV funding comes from two major sources. The largest is from a percentage of the subscriber franchise fees collected by Comcast. A contract between Comcast and the County passes these franchise fees to MCTV. In addition, the City signs a similar contract for these fees with Comcast, again, with a pass through to MCTV. In 2008, the combined County and City revenue streams totaled approximately \$145,000 per year, or 83% of MCTV's budget. MCTV's revenue is less than other stations in more populated areas of the County that have more cable subscribers and franchise fee income.

The second major source of income to MCTV comes from charging local public agencies to record and broadcast their meetings. This revenue amounted to 14% of the total budget, or

\$19,870, in the last fiscal year.⁵ MCTV negotiates separate contracts with each of these public agencies, charging \$250 to record and \$75 to broadcast each meeting. MCTV has chosen to waive these fees for the Mid-Coast Community Council and the City. In addition, approximately 1.5% of MCTV's revenue comes from membership fees and business sponsorships.

MCTV Bylaws and Voter Rights

To date, MCTV has operated under bylaws approved by its members. The membership roster was less than 120, a fractional subset of the service area's roughly 30,000 residents.

MCTV conducts semiannual Board meetings as laid out in its bylaws. The MCTV Board does not call regular meetings of its members but communicates with them via written mail and email. While Board meetings are open to the public, the time and date of these meetings are not announced to the general public.

MCTV Eliminates Member Voting Rights

On March 16, 2009, the MCTV Board announced to its members an upcoming vote on significant changes to the bylaws.⁶ In the announcement, the MCTV President stated that the vote was necessary to:

- Avoid spending “a great deal of time and effort responding to the disruptive efforts of a few people.”
- Simplify management by saving the costs and time needed to communicate regularly with the MCTV membership.
- Mirror the structure of four other PEG stations in the Bay Area and various other non-profits with different missions.

The MCTV Board proposed these bylaw changes unilaterally, without advance consultation or approval of its membership and chartering organizations. Informally, an MCTV representative told a member of the County Board of Supervisors of the proposed bylaw change shortly before the vote, which was scheduled for April 30, 2009. The Supervisor recommended that MCTV not pursue the bylaw change. The other chartering organization, the City, was not informed or consulted of the proposed bylaw change.

On April 30, 2009, the resolution amending the Bylaws was passed by a vote of 63 votes “Yes” to 15 votes “No.”

The change in the bylaws eliminated:

- MCTV's membership category
- MCTV member's right to inspect station records
- MCTV's Nominating Committee, which was previously charged with identifying potential new MCTV Board Members

All membership rights were, henceforth, reserved exclusively to MCTV's Board. With this change, the MCTV Board became a self-perpetuating body empowered to select replacements for retiring Board Members, the President, and the Station Manager.⁷

⁵ MCTV tax records for 2007-2008 (Attachment 4)

⁶ MCTV justification for bylaws change of April 30, 2009 [http://www.wiredmoon-projects.com/userfiles_mctv/file/Membership%20letter%20re%20bylaw%20vote%20final%20\(X107690\).DOC](http://www.wiredmoon-projects.com/userfiles_mctv/file/Membership%20letter%20re%20bylaw%20vote%20final%20(X107690).DOC)

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed Mid-Coast Television (MCTV) management, a member of the MCTV Board, a member of the public, a member of the County Board of Supervisors, and a representative of the City of Half Moon Bay. The Grand Jury reviewed copies of negotiated Comcast contracts, contracts and charter documents between MCTV and local agencies, as well as MCTV bylaws (past and present), election materials, communications with its Membership, and samples of MCTV's programming. The Grand Jury also examined the MCTV website.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

- 1) The agreements between Mid-Coast Television (MCTV) and its local chartering agencies have been regularly renewed. In the case of the City of Half Moon Bay (City), the renewal is automatic and without review.
- 2) Contrary to a provision in the agreement between the City and MCTV, a survey of the viewing public to ascertain the level of satisfaction with the station's services has never been conducted.
- 3) The majority of MCTV broadcast programming is archival in nature, often obtained from sources outside the community, and is aired repeatedly. The overwhelming majority of MCTV produced programming is of regularly scheduled government meetings. Some new programming produced by others in the community and offered to MCTV has been rejected on technical grounds and occasionally for reasons of religious advocacy.
- 4) MCTV now allows its governmental meeting content to be made available by others as fair use, with appropriate source attribution. MCTV claims the copyright ownership of all its recorded public meeting content and reserves the right to restrict its use at any time.
- 5) Regular sequential archives of past recorded public government meetings older than 18 months are not maintained by MCTV and do not exist. However, it is committed to making recent and future recordings more available to the public through a web-accessible archive.
- 6) The Directors and Station Manager of MCTV acted on April 30, 2009 to eliminate the category of membership, as well as all rights associated with membership through a bylaw change. The MCTV Board absorbed these rights, and became a self-perpetuating governing body. It initiated this action, in part, to eliminate the burden of dissent from the membership.
- 7) The level of MCTV's operating revenues is directly proportional to a finite number of cable TV subscribers.

⁷ Modified MCTV bylaws approved on April 30, 2009 (Attachment 5)

- 8) County staff thoroughly documents financial records and correspondence between MCTV and the County.
- 9) Under federal regulations, Public, Educational, and Governmental Access Services (PEG) Stations, such as MCTV, exist to provide specific services to the community that may not be available through other commercial media.
- 10) Before 2010, the County and the City are the designated public agencies that negotiate with the cable TV companies to acquire the franchise fees that fund MCTV. In addition, the local agencies charter the station and have contractual agreements with MCTV. These agencies also have the right to terminate the operating agreement with MCTV and put the PEG service out for competitive bid.
- 11) In 2010, State law will supersede the contracts between cable TV operators and their local agencies. However, local agencies will continue to retain responsibility for their PEG stations, as well as the responsibility to distribute a percentage of franchise fees to support PEG operation.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that San Mateo County (County) and the City of Half Moon Bay (City) have exercised little oversight with respect to the quality or relevance of the service Mid-Coast Television (MCTV) provides to the community.

The Grand Jury further concludes that:

- 1) The County provides sufficient fiscal oversight of MCTV revenue.
- 2) The City does not provide sufficient fiscal oversight of MCTV revenue.
- 3) The County and City, as the local chartering agencies, have not ensured that the MCTV service remains relevant and responsive to the needs of the community.
- 4) Per the City Agreement with MCTV, the County and the City have failed to survey the public concerning levels of satisfaction with the station, number of viewers, and programming.
- 5) Per the City Agreement with MCTV, the County and the City have failed to identify new potential revenue sources for MCTV.
- 6) There may be an opportunity to more actively solicit program content submissions from local area residents and work with the community to produce new programming.
- 7) Absent sufficient oversight, the MCTV Board and the Management of MCTV have been left to regulate themselves.

- 8) Through bylaw changes that eliminate membership-voting rights, MCTV has significantly reduced the opportunity for member input into MCTV programming and operating policy decisions as stated in MCTV's original bylaws.
- 9) While not required by its charters, MCTV has enhanced service by making its programming available through the internet to non-cable subscribers.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends to the San Mateo County Board of Supervisors and the City Council of the City of Half Moon Bay that they each:

- 1) Communicate and coordinate any agreements with Mid-Coast Television (MCTV) in order to speak with one voice in contractual and oversight matters.
- 2) Join with MCTV to create a strategic plan that improves the quality and relevance of service.
- 3) Initiate with MCTV a process of improvement based on community surveys and public input. The bylaws of MCTV should be adjusted to codify these reforms.
- 4) Encourage MCTV to seek out, foster, and broadcast new locally created programming. The agencies should consider Public, Educational, and Services (PEG) Station guidelines as a minimum-programming standard.
- 5) Work with MCTV to identify and develop new funding sources so that MCTV may carry out its mission more effectively.
- 6) Direct MCTV to publicly announce and invite the public to participate in its Board meetings.

**APPROVED BY
BOARD OF SUPERVISORS**

SEP 29 2009

**CLERK OF BOARD
BY *Maria L. P. [Signature]* DEPUTY**



**COUNTY OF SAN MATEO
Inter-Departmental Correspondence**

County Manager's Office

DATE: September 3, 2009
BOARD MEETING DATE: September 29, 2009
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Board of Supervisors
FROM: David S. Boesch, County Manager
SUBJECT: 2008-09 Grand Jury Response

RECOMMENDATION:

Accept this report containing the County's responses to the following 2008-09 Grand Jury reports:

1. Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority, and
2. Who's Watching Mid Coast Television (MCTV)

BACKGROUND/DISCUSSION:

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. To that end, attached is the County's response to the Grand Jury report on the Waste Management RFP Process by the South Bayside Waste Management Authority and Who's Watching MCTV both issued on July 10, 2009.

Acceptance of this report contributes to the Shared Vision 2025 outcome of a Collaborative Community by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process involvements are made to improve the quality and efficiency of services provided to the public and other agencies.

COLLABORATIVE COMMUNITY



Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Findings:

Staff is in general agreement with the Grand Jury's findings with the exception of the Findings listed below. Several of the responses below reference specific material prepared by the SBWMA Board, which are available on the SBWMA website (www.rethinkwaste.org) in their entirety. The specific sections or pages referred to below have been attached to this response for ease of reference.

Finding 4: In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.

Response: Disagree. The "RFP for Collection Services" dated November 1, 2007 specified five (5) criteria that were used by the Selection Committee to evaluate the RFPs (sections 6.1 and 6.2). The "reasonableness" criteria was adequately addressed by the Selection Committee in the "SBWMA Collection Services RFP-Selection Committee Report: Evaluation and Scoring of Proposals" (pgs. 5-7, section 3.2) dated August 21, 2008.

Finding 5: Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness".

Response: Agree in part. The SBWMA staff reports titled "Collection Services" and "Facility Operations Services" reported the Evaluation Committee scores as a group; however, the individual Evaluation Committee and Selection Committee members' overall point ratings were included in the reports. The recommendations of both committees were consistent with each other.

Finding 6: The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's reference in San Jose was not checked.

Response: Agree in part. The Grand Jury Report indicates that SBWMA's consultant reported at a Menlo Park City Council meeting that effort was made to contact the City of San Jose; however, follow-up was not made. Staff was not present at the City of Menlo Park meeting and cannot confirm this statement. Although SBWMA's consultant may not have spoken directly with the City of San Jose, the experience that the City of San Jose had with Norcal Waste System ("Recology") was thoroughly discussed by both the Evaluation and Selection Committees.

Finding 7: South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.

Response: Disagree. The original South Bay Recycling (SBR) proposal indicated that the operations management would occur at the site by a senior operations manager. SBWMA deemed this level of management to be inadequate, and required SBR to also assign executive and financial managers to this site instead of having these functions performed from their off-site headquarters.

Finding 8: SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.

Response: Agree in part. SBR's proposal was evaluated positively by both the Evaluation and Selection Committees. Throughout the negotiation process, it was determined that SBR made errors in their cost estimates and were requested to modify their on-site management plan. At the direction of the SBWMA, SBR provided a revised proposal in late 2008 that addressed both of these issues. Cost is one of the eight evaluation criteria used in the Evaluation Committees recommendations. The \$1.2 million dollar figure is the sum of SBWMA-directed changes and also addresses SBR assumption errors.

Finding 9: It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.

Response: Disagree. SBWMA contacted SBR and the County of Los Angeles' Local Enforcement Agent (LEA) to discuss and review the stated violations. These violations were taken into consideration during the evaluation and selection process. This issue was also discussed in depth at SBWMA board meetings on several occasions.

Finding 10: The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.

Response: Disagree. The SBWMA and member agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued. The SBWMA staff reports relating to the RFPs for "Collection Services" and "Facility Operation Services" were extremely detailed in terms of the evaluation criteria used to select and recommend contractors for both services.

The SBWMA staff report for the August 28, 2008 board meeting included the six evaluation criteria categories that were considered during the evaluation and selection process for the Collection Service proposal review process. The evaluation processes was detailed in the, "SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals", dated August 21, 2008 (sections 3.1 and 4.1-4.5). This addresses the evaluation and selection process for all RFP responses.

The March 18, 2009 Evaluation Committee Report titled "Facility Operations Selection" directly addresses the evaluation and selection process for the two short listed RFP responders, SBR and Hudson Baylor. This report provides a point-by-point analysis of nine (9) critical criteria between these two RFP responses (pgs. 2-12).

Recommendations:

The Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designate elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)] should:

- 1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of information contained in this Grand Jury report.**

Response: Disagree. Both contracts were extensively reviewed, evaluated and considered at multiple SBWMA board meetings, which are public meetings, during the past 18 months. The SBWMA board voted to award the Collection Services contract to Norcal Waste System ("Recology") on August 28, 2008 by a 9-0-2-1 (yes-no-abstain-absent) vote. The County of San Mateo was one of the nine member agencies that voted in favor of the recommendation. The SBWMA Facilities Operations contract was awarded to SBR by the SBWMA board on April 23, 2009 by a 10-2-0-0 (yes-no-abstain-absent) vote. The County of San Mateo was one of the two member agencies that voted in opposition on this item.

Member agencies have the ability to select a different Collection Service Provider, however, the County of San Mateo voted in favor of the Collection Service Provider recommended through the RFP process.

- 2. In future Request for Proposal processes:**

- a. Clearly define and objectively and consistently apply the evaluation criteria.**

Response: Agree. This recommendation should be implemented as the Request for Proposal processes should be clearly defined, objective, and utilize consistent evaluation criteria.

- b. Provide for an appeals process before the final contracts are signed.**

Response: Agree in part. This recommendation may be implemented when appropriate. It is typical for County RFP's to include an appeal or a protest process. However, the RFP was a collaborative process, and it is

understood that some agencies do not include appeals or protests as a part of their RFPs.

c. Assure the proposers that alternate proposals will be considered.

Response: Agree in part. This recommendation can be implemented in future RFP processes, if and when the type of services being selected warrants alternate proposals.

d. Ensure that representatives from other jurisdictions are participants on the committees.

Response: Agree in part. This recommendation can be implemented, however, it is unclear whether the Grand Jury is suggesting that representatives from the SBWMA member agencies, or members of jurisdictional agencies outside of the SBWMA participate on the committees. It is preferred a review of proposals adequately involve a sufficient number of member agencies with subject matter expertise to ensure objective results.

e. Ensure that no one individual chair both committees.

Response: Agree in part. This recommendation can be implemented; however, it may depend upon the specific circumstances and whether it is more appropriate to have different individuals chair each committee.

3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Response: Agree. This recommendation could be implemented as the Joint Powers Authority Agreement includes provisions that allow for modification to the Agreement that stipulates participation by member agencies. The County of San Mateo supports further discussion that would provide the SBWMA with greater participation from elected officials during future decision-making processes.

Attachments:

"RFP for Collection Services", Sections 6.1 and 6.2, dated November 1, 2007

"SBWMA Collection Services RFP-Selection Committee Report: Evaluation and Scoring of Proposals", Section 3.2 (pgs. 5-7), and Sections 3.1 and 4.1- 4.5, dated August 21, 2008

"Facility Operations Services" (pgs. 2-12), dated March 18, 2009

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Who's Watching MCTV?

Findings:

Staff is in general agreement with the Grand Jury's findings.

Recommendations:

The Grand Jury recommends to the San Mateo County Board of Supervisors and the City Council of the City of Half Moon Bay that they each:

1. **Communicate and coordinate any agreements with Mid-Coast Television (MCTV) in order to speak with one voice in contractual and oversight matters.**

Response: Agree, however, the recommendation requires further review and evaluation of both agreements with MCTV to determine the differences between the agreements and whether there would be any benefit gained from having similar agreements between MCTV and each jurisdiction. Additionally, the City and the County have separate agreements with Comcast containing different elements and requirements that may preclude implementation of identical agreements with MCTV.

2. **Join with MCTV to create a strategic plan that improves the quality and relevance of service.**

Response: Agree in part. This recommendation can be implemented should MCTV embark on creating a strategic plan. The County is willing to be an active participant in a strategic planning process and offer input during the planning process. However, MCTV should take the lead on any strategic planning effort.

3. **Initiate with MCTV a process of improvement based on community surveys and public input. The bylaws of MCTV should be adjusted to codify these reforms.**

Response: Agree in part. The recommendation to initiate surveys and public input, as well as, modifying the MCTV's bylaws could be implemented, but the County can only assist MCTV in obtaining feedback and suggestions from their viewers. The County can offer suggestions to the bylaws in terms of community surveys or public input components; however, the MCTV Board is the entity responsible for revising and adopting bylaws.

4. **Encourage MCTV to seek out, foster, and broadcast new locally created programming. The agencies should consider Public, Educational, and Services (PEG) Station guidelines as a minimum-programming standard.**

Response: Agree. The recommendation for MCTV to broadcast recent and locally created programming can be valuable to the viewers; however, even programs that are not locally created can be very valuable to MCTV's viewers. The MCTV website contains information and requirements for programming that is submitted to MCTV, which could be recent and locally created. It appears that MCTV does not preclude programming contributions produced locally, but does specify that the submittals will be viewed by MCTV prior to being aired on the station. MCTV's viewers can also benefit by programming produced by other PEG channels or nonprofit organizations that provide appropriate programming for PEG channels. There are many important messages and information that have been produced by other entities that may have great value to MCTV viewers. This appears to be an affordable option for a PEG station of this size with limited revenue. The County can work with MCTV to ensure they are aware of specific programming that may have value to their viewers and encourage that the programs be aired on the station.

5. Work with MCTV to identify and develop new funding sources so that MCTV may carry out its mission more effectively.

Response: Agree. The recommendation for MCTV to identify and develop new funding sources is important, particularly in light of the other options available to television watchers that do not rely on cable. The existing franchise agreement between the County and Comcast allows for PEG Capital funding. The Board of Supervisors previously approved an allocation of this funding to MCTV and they have been reimbursed appropriately for PEG Capital expenses in connection with the Board's approval and the franchise agreement. The County can provide input to MCTV in regards to funding options, but this is a challenge that many PEG channels face and work to solve in various ways.

6. Direct MCTV to publicly announce and invite the public to participate in its Board meetings

Response: Agree. The MCTV Board meetings are open to the public, however, notification of the meeting dates and times could be improved to potentially increase the number of meeting attendees. Staff was unable to find information on the MCTV website regarding the MCTV Board Members, scheduled meetings, agendas, meeting minutes, or existing bylaws. The website could be a valuable and visible place to post this type of information to keep the public informed of MCTV Board activities and bylaw requirements.



CITY OF HALF MOON BAY

City Hall, 501 Main Street
Half Moon Bay, CA 94019

October 6, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: Grand Jury Findings and City of Half Moon Bay Responses

Dear Judge Miram:

The Half Moon Bay City Council at its October 6, 2009 meeting, reviewed and approved the following responses to the Grand Jury's July 10, 2009 report regarding, "Who's Watching MCTV?"

- 1. The agreements between Mid-Coast Television (MCTV) and its local chartering agencies have been regularly renewed. In the case of the City of Half Moon Bay (City), the renewal is automatic and without review.***

The original agreement between MCTV and the City was approved in September 1995. A revised MCTV/City contract was approved on July 22, 1998. The 1998 agreement contains the following language:

"C. The term of this agreement shall be for three years from the date of its execution (July 22, 1998). Unless either party shall notify the other in writing at least 90 days prior to the expiration of the three-year term of this agreement, the agreement shall be automatically extended for an additional three year term."

The current three year term ends on July 22, 2010. If the City Council decides to change or cancel the agreement the City would be required to notify MCTV on or before April 22, 2010. Since the MCTV services are based on separate agreements with the County and the City, any long term changes to future agreements will require coordination with the County. The City's preference would be to adjust the term date of future agreements to coincide with the term date of the County's agreement. Content of future agreements would also be coordinated with the County.

- 2. Contrary to a provision in the agreement between the City and MCTV, a survey of the viewing public to ascertain the level of satisfaction with the station's services has never been conducted.***

The City agrees with the Grand Jury's findings on this item. In negotiations of future agreements, consideration will be given to alternative methodologies for reviewing agreement effectiveness.

- 3. The majority of MCTV broadcast programming is archival in nature, often obtained from sources outside the community, and is aired repeatedly. The overwhelming majority of MCTV produced programming is of regularly scheduled government meetings. Some new programming produced by others in the community and offered to MCTV has been rejected on technical grounds and occasionally for reasons of religious advocacy.***

The City does not have specific data to agree or disagree with the Grand Jury's findings. Service delivery and content discussions will be included in negotiations of future agreements.

- 4. MCTV now allows its governmental meeting content to be made available by others as fair use, with appropriate source attribution. MCTV claims the copyright ownership of all its recorded public meeting content and serves the right to restrict its use at any time.***

The City agrees with the first sentence of this statement. Regarding the second sentence MCTV states in its July 13th letter that:

"MCTV maintains its copyright on videos it produces but under the MCTV policy there is no restriction on the use of the meeting videos."

In the City's experience, there is no restriction on the use of the City's meeting videos.

- 5. Regular sequential archives of past recorded public government meetings older than 18 months are not maintained by MCTV and do not exist. However, it is committed to making recent and future recordings more available to the public through a web-accessible archive.***

The City agrees with the Grand Jury's findings on this issue.

- 6. The Directors and Station Manager of MCTV acted on April 30, 2009 to eliminate the category of membership, as well as all rights associated with membership through a bylaw change. The MCTV absorbed these rights, and became a self-perpetuating governing body. It initiated this action, in part, to eliminate the burden of dissent from the membership.**

Other than the Grand Jury's statement/findings the City has no direct knowledge on the conclusions reached by the Grand Jury in the last sentence.

- 7. The level of MCTV's operating revenues is directly proportional to a finite number of cable TV subscribers.**

The City agrees with the findings of the Grand Jury on this issue.

- 8. County staff thoroughly documents fiscal records and correspondence between MCTV and the County.**

The City does not have specific knowledge or data to support the Grand Jury's statement/findings on this issue.

- 9. Under federal regulations, Public, Educational, and Governmental Access Services (PEG) stations, such as MCTV, exist to provide specific services to the community that may not be available through other commercial media.**

The City agrees with the findings of the Grand Jury on this issue.

- 10. Before 2010, the County and the City are the designated public agencies that negotiate with the cable TV companies to acquire the franchise fees that fund MCTV. In addition, the local agencies charter the station and have contractual agreements with MCTV. These agencies also have the right to terminate the operating agreement with MCTV and put the PEG service out for competitive bid.**

The City agrees with the Grand Jury's findings on this issue.

11. In 2010, State law will supersede the contracts between cable TV operators and their local agencies. However, local agencies will continue to retain responsibility for their PEG stations, as well as the responsibility to distribute a percentage of franchise fees to support PEG operation.

The City agrees that, with the enactment of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), the State Legislature has preempted local authority to enter into Franchise Agreements with cable providers. The City further agrees that DIVCA, as currently written, provides for local agencies to receive state franchise fees in exchange for the use of public rights-of-way for the delivery of video services provided within their jurisdictions, based on gross revenues, pursuant to a specified formula. However, based on the State's current and past actions in taking local agencies revenues, such as property tax, motor vehicle in-lieu fees and other local revenues, the State's ability or willingness to follow through with this commitment is uncertain. Once revenue control is turned over to the State past actions indicate that the revenue amounts to local agencies may be reduced or ultimately eliminated. Time will be the true test of this statement. However, history tends to be a better indicator of the State's commitment or the lack thereof for protecting or continuing to pass through local revenues.

Recommendations

- 1. Communicate and coordinate any agreements with Mid-Coast Television (MCTV) in order to speak with one voice in contractual and oversight matters.***

The City and County have started a dialog regarding the MCTV agreement and development/negotiations of future agreements. The City's next window of opportunity to notice MCTV and begin agreement negotiations will be a minimum of 90 days before July 22, 2010.

- 2. Join with MCTV to create a strategic plan that improves the quality and relevance of service.***

Key performance standards for MCTV will be included in the negotiations and development of future agreements.

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- 3. Initiate with MCTV a process of improvement based on community surveys and public input. The bylaws of MCTV should be adjusted to codify these reforms.**

The methodologies for service delivery improvements and process improvement opportunities will be included in the negotiations and development of future agreements.

- 4. Encourage MCTV to seek out, foster, and broadcast new locally created programming. The agencies should consider Public, Educational, and Services (PEG) Station guidelines as a minimum-programming standard.**

In cooperation and coordination with the County, future agreement negotiations will include content and performance standards for the service provider.

- 5. Work with MCTV to identify and develop new funding sources so that MCTV may carry out its mission more effectively.**

Funding sources and methodologies will be a key component of future agreement negotiations.

- 6. Direct MCTV to publicly announce and invite the public to participate in its Board meetings.**

The requirements for MCTV Board actions will be reviewed as part of the negotiations of future agreements between the City and MCTV. This as well as other items and changes in future agreements will also be coordinated with the County.

A copy of the Resolution approving this response to the Grand Jury is attached.

Sincerely,



Michael Dolder
Interim City Manager
City of Half Moon Bay

c: City Council
City Clerk
PDF to grandjury@sanmteocourt.org