TOWN OF FAIRFAX
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September 5, 2019

Pat Randolph. Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Re: Response to the June 13, 2019 Civil Grand Jury Report titled *Marin Telecommunications Disconnect*

Dear Foreperson Randolph:

Enclosed please find a response to Recommendations 2, 3 and 4 from the Town of Fairfax to the June 13, 2019 Marin County Civil Grand Jury report titled *Marin Telecommunications Disconnect*. This item was reviewed and approved by the Fairfax Town Council at their September 4, 2019 regular meeting.

Please do not hesitate to contact me should you need additional information or clarification.

Sincerely,

Garrett Toy
Town Manager

Enclosures

cc: The Honorable Judge Paul Haakenson
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

TOWN OF FAIRFAX RESPONSE TO GRAND JURY REPORT RECOMMENDATIONS
2018-2019 Marin Civil Grand Jury Report *Marin's Telecommunications Disconnect*

The Marin County Civil Grand Jury recommends the following:

R2. The MTA's franchise fee collection and disbursement responsibilities should be moved to the MGSA.

This recommendation should be taken under advisement for future consideration.

The MTA reports that an evaluation has been done over the past few years regarding the moving of MTA's functions to MGSA. Prior to the retirement of MTA's long serving Executive Officer in 2018, the MTA again reevaluated its mission and had discussions with MGSA regarding the potential for MGSA to "take on" the MTA under its multi-jurisdictional umbrella. At that time, in discussing possible alternative arrangements with MGSA, its Executive Director determined that simply incorporating the responsibilities of MTA into MGSA's existing staffing and programmatic structure was not feasible. A new program with staffing and funding would have had to have been created, which led in part to the determination to continue with the MTA's JPA structure.

As a result, the MTA Board ultimately determined to continue the MTA's JPA structure with a leaner staff and fewer responsibilities. The Executive Officer position was revised from a 0.80 FTE to a 0.50 FTE, the Customer Service contract position was eliminated, and the customer service duties were combined with a finance/accounting contract position. MTA operating expenses are budgeted at about $50,000 a year less in FY2019-20 than was estimated in FY2016-17. The MTA Board continues to evaluate its mission/staffing – most recently during its FY2019/2020 budget discussions.

Based on the MTA's evaluation, the Town finds that it would not be appropriate for MGSA to assume MTA's responsibilities at this time. However, the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.

R3. MTA's responsibilities for CMCM should be terminated.

This recommendation should be taken under advisement for future consideration.

The MTA reports that the relationship between MTA and CMCM is built upon two foundations, which are: the Designated Access Provider (DAP) contractual agreement between the MTA, a JPA representing ten jurisdictions, and CMCM; and Section 5780(b) of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which states: "The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels."

Both of these elements create governance responsibilities and obligations between MTA and CMCM that cannot be simply set aside. For example, the MTA's ten local governments, and the City of Larkspur in a sub-contract, have "designated" that the MTA contract with CMCM shall manage the "exclusive" provision of public, education and government channels.

That obligation also includes MTA's ownership of the capital equipment that CMCM has purchased using PEG funds to establish the broadcast and transmission capabilities at each city, town and the County. Twice a year, CMCM delivers reports to the MTA Board Members and the public at the MTA's regular meetings about CMCM's plans and activities (Annual Report) and its use of the PEG funds (Annual Budget).

CMCM is a non-profit corporation with its own governance structure. As befitting the important role that MTA provides in governing the DAP agreement and distributing the PEG fees to the CMCM, MTA appoints two voting members on the CMCM Board of Directors, and the non-voting MTA Executive Officer frequently provides informational reports to the CMCM Board.

In summary, MTA oversight of the CMCM activities and expenditures are duties required by both State law and the Designated Access Provider (DAP) agreement.

The Town supports the MTA's analysis of its responsibilities for CMCM, but also believes the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.

R4. The MTA should be dissolved.

This recommendation should be taken under advisement for future consideration.

The MTA indicates it considered structural options in its Strategic Plan revision in 2016 (and again in 2018) and concluded that such an action would not be in the best interests of its ten jurisdictions. Please reference response to Recommendation 2 above for more information pertaining to this matter.

As mentioned in the findings, in 2018-19, the MTA's estimated income from franchise and PEG fees was about $4.1 million. The MTA is currently funded by its constituent members from the franchise fees. The revenue is declining as media consumers have more choice than simply cable television for their information and entertainment consumption. However, in Marin County, the "cord cutting" is not occurring at the same rate as other locales, and the cable companies continue to raise their prices for the services, which also offsets some of the revenue decline.

As noted previously, the Federal Communications Commission (FCC) is taking up a proposed rule in August 2019 that may have the potential to significantly reduce franchise fee and PEG funds. It is possible that the FCC may eliminate franchise and PEG fees at some point in the future. At present, there are no proposals before the FCC or Congress to do that, and MTA diligently monitors and comments upon proposals designed to affect PEG channel services and franchise fee revenues. The MTA Board of Directors is aware of the changing environment, and when needed, it will take appropriate and responsible action to accommodate those changes. If the Board decides to reconsider its position, it will conduct a detailed evaluation of its options, and make decisions based on its findings. As discussed above, the MTA Board has reevaluated its mission/staffing in the past and continues to do so, most recently during its FY19/20 budget discussions.

Based on the MTA's evaluation, the Town finds that it would not be appropriate for MTA to be dissolved at this time. However, the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.