

## AGENCY RESPONSE TO GRAND JURY REPORT

Report Title: **Marin's Telecommunications Disconnect**

Report Date: **June 6, 2019**

Response Date: **September 6, 2019**

Agency Name: Marin Telecommunications Agency Agenda Date: August 14, 2019

Response by: Barbara Coler Title: Chair, MTA Board of Directors

### FINDINGS

- I (we) agree with the findings numbered: None
- I (we) disagree *partially* with the findings numbered: F4, F5, F7, F8
- I (we) disagree *wholly* with the findings numbered: F1, F2, F3, F6

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.) See attachment.

### RECOMMENDATIONS

- Recommendations numbered \_\_\_\_\_ have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered R2, R3 and R4 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.) See attachment.

Date: 8/16/19 Signed: 

Chair, MTA Board of Directors

Number of pages attached: 11



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August 16, 2019

**MTA Recommendations Response to “Marin’s Telecommunications Disconnect”  
Civil Grand Jury Report, Report dated June 13, 2019**

Grand Jury Recommendations

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

MTA Response:

The MTA Board disagrees with this recommendation.

Moving MTA’s functions to MGSA has been evaluated in the last few years. 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.

### **R3. MTA’s responsibilities for CMCM should be terminated.**

#### MTA Response:

The MTA Board disagrees with this recommendation.

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.

#### **R4. The MTA should be dissolved.**

##### MTA Response:

The MTA Board disagrees with this recommendation.

The MTA considered structural options in its Strategic Plan revision in 2016 (and again in 2018) and determined that such an action would not be in the best interests of its ten jurisdictions. See further discussion in the response to Recommendation 2 above.

As noted 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.

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August 16, 2019

**MTA Findings Response to “Marin’s Telecommunications Disconnect” Civil  
Grand Jury Report, Report dated June 13, 2019**

Grand Jury Findings

**F1. Neither the County nor any of its agencies is providing strategic leadership or advice for telecommunications services such as broadband internet access or 5G, leaving Marin poorly served.**

MTA Response:

During the past four decades, County, city and town local governments in Marin County have worked together in contractual and joint powers agreements and authorities to address a variety of collaborative communications technology issues. At times, these efforts have included non-profit agencies, non-governmental organizations (NGOs) and private sector companies to deliver service and programs to the people who live and work in Marin County.

In 1994, the Marin County Cable Rate Regulation Joint Powers Authority was formed to administer *cable* television services in the county. In 1996, the federal government adopted the Telecommunications Act which was the first major overhaul of telecommunications law in almost 62 years. In response, in 1998 the Cable Rate Regulation JPA evolved into the Marin Telecommunications Authority, as local jurisdictions determined it would be appropriate to oversee and regulate a variety of communications services associated with *cable media*. Then in November 2006 with the adoption of the Digital Infrastructure and Video Competition Act (DIVCA) for California, most elements of local authority were preempted and *limited to cable television oversight*. DIVCA went into effect in

2007 and it was significantly amended thereafter, with most of its amended provisions becoming effective in 2008.

In March 2008, the Marin Telecommunications Authority adopted a Strategic Plan for the organization that included plans to be “...*the key policy-making and coordinating body related to telecommunications matters in Marin.*” However, the limitation under DIVCA is primarily to cable TV media. And, over time, it became clear to the staff and to the MTA Board that DIVCA’s effect, as amended, was more sweeping than MTA had originally anticipated.

Over the next several years, the MTA worked with existing and new organizations in Marin to attempt to carry out that mission. MTA led and participated in a series of endeavors, as local officials worked to find ways to oversee, fund, regulate, design, install and monitor/maintain the physical infrastructure, the communications data and media involved with cable systems and then the multiple layers of telecommunications structure that the people of Marin County increasingly relied upon. MTA staff applied for grants, supported funding and programming for other organizations that met the qualifications for study, programmatic and capital funding, and tracked opportunities and issues in the cable television, broadband and the telecommunications realms.

During the 2008 to 2016 timeframe, Federal and State legislative action continue to restrict and preempt local government control and oversight of the communications infrastructure and the public right of way.

By 2015, despite MTA’s and other agency and jurisdictional efforts, the original mission was no longer viable. In 2016, MTA initiated another strategic planning process to revise the mission and goals/objectives to reflect the new reality of the increasing limitations on its authority, and during this timeframe one jurisdiction member departed the organization. The mission statement adopted in 2016 (it was again reevaluated in 2018) is shown below.

*Support availability, accessibility, affordability and public inclusion in the advancement and enhancement of telecommunications infrastructure and services in Marin on behalf of MTA’s members and the community.*

MTA provided both staffing and funding to support telecommunications projects in the County in the 2016 fiscal year, and then scaled its focus to a support role as

it amended its Strategic Plan upon the retirement of its long-serving Executive Officer. Even so, the responsibilities of the restructured MTA include the following:

- Monitor the legality and services of the County's cable franchise agreements;
- Provide limited customer service on cable issues;
- Limited support for broadband improvements, net neutrality, digital inclusion and digital divide efforts in the county if directed by the Board and within allowable resources;
- Audit cable franchise and PEG (public, education and government) fees periodically for accuracy;
- Work with the Community Media Center of Marin (CMCM) and govern the use of and distribution of PEG fees by/to CMCM;
- Negotiate and administer the Designated Access Provider (DAP) agreement with CMCM on behalf of the MTA members; and
- Effectively distribute and allocate the franchise fee and PEG funds to each jurisdictional entity.

MTA provides strategic leadership and guidance to its member jurisdictions within the DIVCA limitations. For example, in 2018/2019, the Federal Communications Commission (FCC) proposed/adopted rules which reduced or eliminated local control of the public rights of ways regarding small cell wireless attachment devices. In August 2019, the FCC will consider a proposed rule that has the potential to significantly reduce franchise fees and PEG funds. In late 2018, on behalf of its members, the MTA joined a legal coalition to contest the FCC's adopted rules and this new proposal, and also continues to support the coalition's efforts directly and indirectly through the National Association of Telecommunications Officials and Advisors (NATOA). On behalf of its members, the MTA has submitted filings and letters against the adopted rules to the FCC, and has also submitted support letters for proposed congressional legislation to overturn the adopted FCC rules.

**F2. Each municipality has been obliged to negotiate separately with 5G and fiber to the home telecom providers, so the potential benefits of aggregation have been lost and some communities remain unserved or underserved.**

MTA Response:

The MTA has no authority to oversee, permit or regulate “5G and fiber to the home telecom providers” as those functions have been preempted by both Federal and State law as outlined above. To reiterate, MTA’s primary authority is with cable television providers (again with the limitations of preemptions under Federal/State law). In addition, each jurisdiction dictates its own community development, zoning and design regulations, which are fundamental responsibilities of individual governments; these are not “shared efforts” among multiple jurisdictions.

**F3. The MTA has chosen to abandon its policy making and coordinating mission, so the MTA serves no strategic or advisory function to the county.**

MTA Response:

The MTA made decisions about its adopted mission in 2008 that were no longer viable in 2016 (see F1 response above for further discussion). In 2016, The MTA Board of Directors and staff worked with independent consultants, representatives from other groups in the county interested in technology issues and private citizens to revise the MTA’s strategic decision. This public process resulted in an updated strategic plan that was adopted by the MTA Board of Directors in November 2016. Also, in 2018, prior to the retirement of its long-serving Executive Officer, the MTA considered and reviewed the overall administrative functions and the mission of the MTA; it then reevaluated/further streamlined its mission which resulted in additional revisions to the Strategic Plan in June 2018.

The Strategic Plan, at the direction of the MTA Board and within its limited financial allocation, allows the MTA to continue to serve as a supportive information resource to local jurisdictions on cable television and to a lesser extent on broadband issues.



**F4. Currently, the main function of the MTA which is to collect and distribute cable franchise and PEG fees to its members, could be efficiently performed by the MGSA.**

MTA Response:

Moving MTA’s functions to MGSA has been evaluated in the last few years. 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.

**F5. CMCM is a nonprofit tax-exempt corporation which is governed by its own board so it could operate without MTA oversight.**

MTA Response:

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.”

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

**F6. The MTA has applied for few of the available Federal or CPUC grants, and it has missed opportunities to access existing fiber networks, all of which as caused Marin County to fall behind the levels of telecom serviced provided to other areas in California.**

Between 2006 – 2009, the MTA was active in researching and applying for study, implementation and capital grant funding based on the strategic plan desired outcomes. With the advent of DIVCA in 2006 and DIVCA's further amendments into 2008, and the start of the recession in 2008/2009, functional funding options receded, and many local governments in Marin and beyond retrenched staffing, programs and services to reflect lower baseline revenues available for operations and capital outlays.

Marin County, with its small population and relatively high income levels, did not and does not meet the qualifications for many federal and state programs. The

North Bay/North Coast Broadband Consortium (NBNCBC) which was formed in 2013, received federal funding and private donations in 2016 to create a fiber broadband network in rural western parts of the counties of Marin, Sonoma and Mendocino. The collaboration, which included a rural, underserved, low income population and federal and state lands, qualified for “rural broadband initiative” funding from the Department of Agriculture in ways that Marin County’s 12 suburban jurisdictions did not.

Dane Jasper, CEO of Sonic Networks, based in Santa Rosa CA, provided an informational report to the MTA Board of Directors in November 2018, at which he described the challenges of attempting to create a fiber/broadband network, private or municipal, for communities like those in Marin County. *The MTA requested this presentation so that its individual member jurisdictions could learn from him in one session for all rather than setting up individual meetings for each jurisdiction.* Mr. Jasper suggested a special tax measure could be a way to provide the capital funding to build, then to operate and maintain a fiber based network, and further indicated that federal or state grant funding was generally not available unless the communities were severely disadvantaged. He noted that a fiber network, municipally or privately owned and operated, was only one component of an increasingly complex network of physical and software infrastructure being used for communications services. Finally, he also noted that having a fiber network in place will not replace or stop telecoms from installing “5G” in a city/town/county.

**F7. The MTA’s income is declining and may be eliminated altogether; as a result, the MTA will have no function and is likely to disband or it will need to be funded by its constituent municipalities or from some other source.**

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.

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**F8. The county could benefit from strategic guidance and leadership in technical, business and regulatory matters regarding telecommunications for its businesses and residents.**

The MTA continues to deliver resources on cable television services, and will support broadband, legislative and regulatory initiatives that fall within its purview. Should the jurisdictions in Marin County wish to expand their efforts into telecommunications matters, there may be preemptive challenges from Federal and State government, and from the private sector.

If the County of Marin determines that it is appropriate to establish an advisory committee on telecommunications issues, the MTA Board suggests that the mission of the committee and the expected outcomes be clearly defined.

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