COUNTY OF MARIN

RESPONSE TO GRAND JURY REPORT FINDINGS AND RECOMMENDATIONS

REPORT TITLE: **"Marin's Telecommunications Disconnect"**

REPORT DATE: **June 6, 2019**

RESPONSE BY: **County of Marin Board of Supervisors**

GRAND JURY FINDINGS

- We agree with the finding numbered: **F8**.
- We disagree wholly or partially with the findings numbered: **F1-F7.**

GRAND JURY RECOMMENDATIONS

- Recommendations numbered **R1-R4** will not be implemented because they are not warranted or reasonable.

Date: _______________________ Signed: ____________________________

President, Board of Supervisors

County of Marin Response to Grand Jury Report Findings and Recommendations
“Marin’s Telecommunications Disconnect”
(June 6, 2019)

RESPONSE TO 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.

Disagree.

The County of Marin supports the expansion of broadband to drive economic development and job opportunities, to support county service delivery, and to improve health, education, and public safety outcomes for our residents. Broadband must be capable of supporting current technology standards and speeds in order for counties to realize these benefits. This may require infrastructure solutions specific to a given county or region, and certainly requires private capital investment to succeed. Because the scope and scale of broadband to every home is significant, with large capital investments required, the County’s focus is on unserved and underserved populations to better ensure equity in access to digital information. Even with this more limited focus, significant private and/or state federal investment is still required.

For the past several years, Marin County IST has directly, or through a third-party consultant, provided direct oversight of broadband projects funded by the County and California Public Utilities Commission grants through membership in the North Bay/North Coast Broadband Consortium (NBNCBC). Marin County IST was instrumental working with District 4 Supervisors Steve Kinsey and now Dennis Rodoni in securing grants to fund broadband projects in Nicasio and Bolinas, with support and partial funding by the California Public Utilities Commission, the County of Marin, and operating costs funded by subscriber fees among beneficiaries.

In addition, since 1994 Marin County Information Services and Technology Department (IST) has managed the Marin Information and Data Access System (MIDAS), a shared network used by over 30 agencies including the County, other government entities, non-profits, public safety agencies, and special districts. Through MIDAS, agencies share Internet access and applications for increased collaboration and coordination, as well as cost savings. Shared applications are owned by specific agencies such as the Sheriff’s Department, Community Media Center of Marin, and others. MIDAS delivers data, voice and video from one point to single or multiple destinations over its private network.

The County of Marin has also been party to contractual and joint powers agreements and authorities to address a variety of collaborative communications technology issues, most notably the Marin Telecommunications Agency (MTA). Unfortunately, Federal and State legislative action has significantly restricted and preempted local government control and oversight of the communications infrastructure and the public right of way - including cable television and, more recently, implementation of next generation 5G wireless infrastructure.

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.

Disagree.

Through the NBNCBC initiative, for example, the County's third-party consultant supported negotiations with providers for the Nicasio and Bolinas projects in unincorporated west Marin County, independent of other agencies within Marin County.

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, and therefore aggregation at scale is not a straightforward proposition, which is also materially impacted by state and federal preemption regarding communications infrastructure and the public right of way.

It is not accurate to conclude that some communities remain unserved or underserved because aggregation has not been accomplished. Material preemption of local authority, as well as the scale of required investment, have long been impediments that have contributed to these conditions locally and nationally.

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.

Disagree.

We understand from the MTA that it made decisions about its adopted mission in 2008 that were no longer viable in 2016. In 2016, MTA's Board of Directors and staff have worked with independent consultants, and representatives from other groups in the county interested in technology issues, as well as residents, 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.

Partially disagree.

We understand from MTA that 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 per year less in FY2019-20 than was estimated in FY2016-17. The MTA Board continues to evaluate its mission/staffing.

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

Partially Disagree.

We understand from the MTA that the relationship between MTA and CMCM is built upon two foundations, which include: 1) the Designated Access Provider (DAP) contractual agreement between the MTA, a JPA representing ten jurisdictions, and CMCM; and 2) 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 member 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 per 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. 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 short, 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 has caused Marin County to fall behind the levels of telecom service provided to other areas in California.

Disagree.

We understand from the MTA that, between 2006–2009, it was active in researching and applying for study, implementation and capital grant funding based on strategic plan desired outcomes. Functional funding options receded since 2008 for a variety of reasons, 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, does not meet the qualifications for many federal and state programs.

With leadership from the County of Marin IST Department and District 4 Supervisors, the North Bay/North Coast Broadband Consortium (NBNCBC), 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, Napa 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 many Marin suburban jurisdictions could 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 would 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.

Partially disagree.

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 these 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.

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

Agree.

Marin County IST would welcome guidance and support from an existing oversight/collaborative body such as the MGSA or MTA as it proceeds with a digital infrastructure assessment and strategic planning initiative. Understanding that next-generation digital infrastructure is necessary to meet connectivity needs among residents, businesses, and public agencies in Marin County, IST intends to involve all stakeholders in the assessment and plan development process. The Digital Infrastructure Plan will map the county's existing infrastructure assets, identify opportunities to best use those assets, and recommend specific actions to maximize the county's digital connectivity, increase collaboration, reduce duplicative efforts, and create opportunities for public-private partnerships to better meet future digital infrastructure needs.

A Digital Infrastructure Plan will also address the County's needs. It can improve connectivity among departments and with external agencies, provide greater redundancy, and lower ongoing operating costs, among other things. These improvements will encourage greater civic engagement through increased access to County data and increase options and reduce barriers for the public to online services.

RESPONSE TO GRAND JURY RECOMMENDATIONS

The Marin County Civil Grand Jury recommends the following:

R1. By December 31, 2019, the Board of Supervisors should appoint a citizen's advisory committee that will provide advice and information on telecommunications services and policy. The Grand Jury recommends that citizens with telecommunications expertise be appointed to the committee.

This recommendation will not be implemented at this time.

We do not believe this recommendation would address the findings highlighted in the report since an advisory committee does not have authority or resources to implement its advice or recommendations. Neither would it address issues of collaboration among the various entities.

Unfortunately, Federal and State legislative action has significantly restricted and preempted local government control and oversight of communications infrastructure and the public right of way - including cable television and, more recently, implementation of next generation 5G wireless infrastructure. As a result, local discretion is largely limited to local zoning and design regulations, which are fundamental responsibilities of the cities and towns. Therefore, a countywide advisory committee would not be in a position to address individual zoning and design regulations for 10 cities and towns.

However, Marin County IST would welcome guidance and support from an existing oversight/ collaborative body such as the MGSA or MTA as Marin County IST proceeds with its digital infrastructure assessment and strategic planning initiative. Understanding that next-generation digital infrastructure is necessary to meet connectivity needs among residents, businesses, and public agencies in Marin County, IST intends to involve all stakeholders in its assessment and plan development process.

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

This recommendation will not be implemented at this time.

Our understanding from MTA is that is has evaluated moving its functions to MGSA 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 to be 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 County of Marin remains open to change longer-term pending continued evolution in technology and/or regulatory or statutory authority afforded to local government by state and federal authorities.

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

This recommendation will not be implemented at this time.

Our understanding from MTA is that its relationship with CMCM is built upon two foundations, which include: 1) the Designated Access Provider (DAP) contractual agreement between the MTA, a JPA representing ten jurisdictions, and CMCM; and 2) 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 member 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 per 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 County of Marin remains open to change longer-term pending continued evolution in technology and/or regulatory or statutory authority afforded to local government by state and federal authorities.

R4. The MTA should be dissolved.

This recommendation will not be implemented at this time.

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. However, the County remains open to the possibility longer-term pending continued evolution in technology and/or regulatory or statutory authority afforded to local government by state and federal authorities.

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 these 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 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.

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.