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April 28, 2020

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Ordinance related to the termination of the Marin Telecommunications Agency (MTA)

Dear Board Members:

RECOMMENDATION: 1) Conduct merit hearing; and 2) adopt the Ordinance.

EXECUTIVE SUMMARY:
The MTA was formed in 1997 as a Joint Powers Authority (JPA) with the adoption of a "Telecommunications Ordinance" by each of its member agencies. Originally, the members hoped that the MTA could negotiate local franchises for all types of telecommunications facilities, thus the name of the organization was changed from the "Marin County Cable Rate Regulation Joint Powers Authority" to MTA. Subsequent to the formation of the MTA, changes to state and federal law eliminated local franchise authority over telecommunications entirely, however, leaving the MTA in much more limited role. At this point in time, the MTA's role is primarily administrative; transitioning of MTA functions to the MGSA will result in greater efficiency and, in the long run, reduced overhead costs associated with the MTA and a larger proportion of franchise fees returning to the County.

In 2006, the State of California passed the Digital Infrastructure and Video Competition Act ("DIVCA"), which preempted local cable television franchises and moved cable television providers to a state franchise system. With this change, MTA went from negotiating local cable franchises to simply serving as the "local entity" authorized to collect state-mandated franchise and PEG fees. Additional changes to state and federal law have continued to erode local government regulatory control and oversight of telecommunications. Currently, the MTA's primary purposes are to collect franchise and PEG fees on behalf of the member agencies, oversee its designated PEG access provider agreement with Community Media of Marin County (CMCM), and to audit state franchise holder records as appropriate. There is no need for a separate JPA to perform these functions.

In November 2019, the MTA Board directed staff to begin examining alternatives to its current structure, including total dissolution (with each member agency assuming responsibility for collecting franchise fees and providing PEG access), contracting with one of the MTA's member agencies, or transitioning its functions to another JPA, the Marin General Services Authority (MGSA). After analysis, transitioning MTA into MGSA was determined to be the most viable, efficient, and financially beneficial option, and on February 12, 2020 the MTA Board of Directors voted 9 – 0, with one member absent, to initiate the transition by June 30, 2020.

On March 12, 2020 the MGSA Board of Directors voted 7-0 to introduce a Public, Education and Government (PEG) Fee Ordinance that will allow the MGSA to collect PEG fee revenues on behalf of participating member agencies starting July 1, 2020. The MGSA also unanimously passed a resolution to provide notice to member agencies of its intent to amend its Joint Powers Agreement to include the Cable Television Franchise and Public, Educational, and Government Access as a program under MGSA. On April 21, 2020, your Board adopted Resolution 2020-35 authorizing the MGSA to collect franchise fees and perform all other functions previously performed by the MTA on the City/Town/County's behalf. The repeal of the ordinance that originally formed the MTA is necessary in order to terminate the MTA under its agreement of formation (please note that the repealed ordinance does not impact the County's zoning regulations regarding telecommunications facilities). Both must be adopted in order to effectuate the termination of the MTA and the transfer of its powers and obligations to MGSA.

BACKGROUND:
With the resignation and planned departure of the current Executive Officer effective June 30, 2020, the MTA Board asked staff to consider options for transitioning the MTA from its current structure into other alternative arrangements. The Board referred the detailed consideration of options to its Finance and Policy (F&P) Committee members, comprised of Chair Barbara Coler, Vice Chair Sashi McEntee, Andrew McCullough, Dennis Rodoni and David Kulik. The F&P Committee met on December 12, 2019 to discuss possible transition options, including the following:

a. Retain Existing MTA Structure and Recruit a New Executive Officer.

b. Retain Existing MTA Structure and Contract with a Member Agency for Operations, such as the County of Marin or the City of San Rafael.

c. Dissolve MTA and transfer its functions, which are now primarily administrative, to the MGSA.

d. Dissolve the MTA entirely, allowing individual member agencies to collect franchise fees under DIVCA and separately contract for PEG services.

Of the four options listed, the F&P Committee members determined that transferring the MTA's statutory, administrative, financial, and contract management functions into MGSA was its preferred option. Retaining the existing MTA structure, then contracting with a member agency for operations was determined to be a more expensive option to run the Agency.

Nevertheless, the F&P Committee asked staff to contact the County of Marin and City of San Rafael to determine any interest. After reviewing the legal memo prepared by MTA and internal conversations, the jurisdictions did not express any interest given other viable options, particularly the transfer of functions to MGSA.

With the Committee's authorization, staff also discussed options with MGSA Executive Officer Michael Frank, who shared the information with the MGSA Board of Directors. The Marin Managers Association (MMA) was also approached regarding their input and any concerns they might have. MTA Chair Coler spoke with CMCM Executive Officer Michael Eisenmenger to let him know about the possible changes, since CMCM holds a key stakeholder role with the MTA. The Committee asked staff to report on the information gathered to the MTA Board.

The F&P Committee members briefly discussed the full dissolution of the MTA and return of its functions back to the individual member agencies and determined that this option would result in increased individual costs, administrative burden, and loss of economies of scale, making it a more cumbersome option for the member jurisdictions.

If the transfer of responsibilities to MGSA was not feasible, the F&P Committee was leaning towards the hiring of a new Executive Officer.

The preferred option of consolidating MTA functions into the MGSA program structure has been discussed and considered periodically over the past several years. The issue arose again with a 2019 Civil Grand Jury report suggesting such a consolidation take place. As discussed in the Grand Jury response, the proposition was not possible at the time. Those impediments no longer exist.

The collective financial benefit to member jurisdictions in dissolving the MTA and transferring its functions to the MGSA is significant. While expenses the first fiscal year will most likely remain the same, future years should generate annual savings in the $100,000 range as elements of MTA's work program become fully incorporated into the program structure of MGSA. Any savings will be realized by the member agencies as it will reduce the overhead deductions from disbursed franchise fees (keeping in mind that such fees are expected to decrease for a variety of reasons).

Additionally, multiple shared service levels are already occurring with MGSA and MTA. The two JPAs coordinate and/or have the same office space, accounting and financial staff, office furnishings and equipment, records management systems, internet provider, phone system, insurance providers and independent auditors. The MTA Executive Officer and the MGSA Executive Officer also provide general administrative backup to each other and share some limited clerical support.

If the recommendation described above is approved by a majority of member jurisdictions, the last meeting of the MTA Board would likely occur on Wednesday, June 10, 2020 to close out the MTA and complete the transfer of functions to MGSA. In addition, the subsequent tasks that need occur are described below.

- The Designated Access Provider Agreement between MTA and the Community Media Center of Marin (CMCM) will be transferred to MGSA for future management, and to assure continuation of the community media services that the MTA jurisdictions have enjoyed for many years.(Approved by the MTA Board April 8, 2020, 7-9 with 3 absent)
- MTA and MGSA will working with the County of Marin and other member agencies to develop a seamless transition of financial and administrative functions from MTA to MGSA.
- MTA and MGSA will coordinate to assign or transition all contracts to MGSA. (Approved by the MTA Board April 8, 2020, 7-0 with 3 absent)
- MTA and MGSA will prepare a joint estimated Fiscal Year 2020/21 budget for the Program which will both continue the administrative/financial/contract functions of MTA while also providing transition funding to complete the process over the next six to 12 months.
- The MTA's PEG fee ordinances for Comcast, AT&T and Horizon will be transferred to MGSA for future management.

FISCAL IMPACT: None.

Please let me know if you have any questions or concerns.

Respectfully submitted,

MHHymel

Matthew H. Hymel
County Administrator