



DATE: July 24, 2019

TO: Council Infrastructure Committee

FROM: Director of Information Technology/CIO

SUBJECT: Public, Education, and Government (PEG) Broadcasting Discussion

RECOMMENDATION

That the Council Infrastructure Committee reviews the report and provides direction.

SUMMARY

The City has undertaken review of the agreement with Chabot-Las Positas Community College District for Public, Education, and Government (PEG) Broadcasting Services involving a comprehensive approach leveraging analysis from multiple City departments. The outcome of this research is outlined in this report for committee review.

BACKGROUND

In 2010, the City of Hayward executed an interim agreement with Chabot-Las Positas Community College District to provide content creation and broadcasting services for local PEG cable television channels.

This agreement was prompted by the state's passage of the Digital Infrastructure and Video Competition Act (DIVCA) in 2006. Prior to the DIVCA, a single local cable franchise owner, Comcast Communications and its predecessors, was responsible for all local public access channel programming and content produced by local community members at the Comcast Studios.

Under DIVCA, the authority of local governments to grant a single local cable franchise was changed to multiple competing cable franchises issued by the California Public Utilities Commission (CPUC). With this change, Comcast no longer was required to produce content for the public access channel and closed its studio used for these purposes. The City selected Chabot Community College (CCC) to provide this service, as CCC was already broadcasting the local education channel, and had the facilities and equipment in place.

Currently, the City can broadcast to three main cable channels in our area. The Government channel is KHRT, Comcast Channel 15 (AT&T Uverse Channel 99), which broadcasts City Council meetings, Planning Commission meetings, Hayward Unified School District meetings, a bulletin board with local government events, and other City-produced content. Channel 15 broadcasts from the City Hall Council Chambers. The education Channel is KGTH, Comcast

Channel 27 (AT&T Uverse 99), which is managed by CCC, and broadcasts educational content. Comcast Channel 28 (also AT&T Uverse 99) is the Public Access Channel, broadcasting content from local area producers and CCC staff. Channels 27 and 28 are both broadcast from CCC studios.

DISCUSSION

In reviewing the existing agreement, both Chabot and City staff recognized that terms within the agreement were no longer in effect, out of date, or not in-line with current community needs. This prompted a comprehensive review involving multiple internal and external resources and stakeholders. This approach included a legal review of DIVCA and PEG, PEG fee review, and contractual and ordinance language review.

Legal Review

The City Attorney's Office conducted a review of two key elements concerning PEG channels that broadcast community events, City Council meetings, public service announcements, and other local original programming. The first element reviewed was the DIVCA. DIVCA is the California law that addresses the receipt of PEG fees by the City and the use of those funds. The second element reviewed was the language in the CCC agreement to ensure CCC is meeting expectations laid out in the agreement as well as satisfying relevant DIVCA and PEG legal standards or other applicable government codes outside of these key areas.

These reviews, coupled with engaging the Buske Group, outside legal counsel who specializes in the DIVCA and PEG area of the law, have resulted in a modernized agreement, which addresses key elements.

Agreement Modifications

- **Modern terms and conditions:** To align with best practices and modern interpretations of the law, terminology has been updated throughout the agreement and ambiguous language has been removed. These updates clearly define the scope of services CCC offers to the City.
- **Scope of Services:** This section of the agreement has been updated to remove redundant and ambiguous language and most importantly, defines the exact scope of service provided.
- **Removed Insurance Requirements:** Requiring that our community members obtain insurance in order to utilize the PEG studios can be a challenge and cost-prohibitive, which may unintentionally serve as a barrier to use of the facility. This requirement has been removed.
- **Fair and equal access to the facility:** One area that needed further definition in the previous version of the agreement was how to gain access to the facility. A provision was added to explicitly define that when community members receive training and/or can demonstrate competency, they are given access per guidelines in the user agreement. This promotes fair and equal access to the facility.

- Training Requirement for Access: Language in the agreement states that training is offered at no/low cost. The intent of this provision is to remove barriers to access and promote the services of the facility.
- Hours of operation: To encourage and promote use for the community, hours of the facility remain explicitly defined to advertise and encourage use by the community.
- User Guide Update: CCC and the Buske Group are actively updating the user guide to reflect modern practices and procedures expected of a Community Media Center.

The central theme of these provisions is to remove barriers to access the facility and encourage the community to create opportunities to utilize this community resource for education and public access broadcasting and training.

Franchise Fee and PEG Fee Review and Summary

The CPUC grants state franchises to cable operators who wish to provide cable service to municipalities. The CPUC has granted a state franchise to AT&T and Comcast to provide cable service to the City of Hayward community. AT&T and Comcast each pay 5 percent of their gross revenues from Hayward operations to the City, or approximately \$1.67 million annually. These revenues are deposited into the General Fund for overall city operations. Additionally, AT&T and Comcast pay 1 percent of gross revenues as the PEG fee, or approximately \$220,000 annually. These revenues are budgeted in the IT Department for the CCC agreement and DIVCA-appropriate expenses.

Per the guidelines of DIVCA, the City requested a review of the PEG fees received from the cable providers. An internal review confirmed timely receipt of PEG fees by the cable providers but found a need to update the City Ordinance to reflect current franchise expiration dates. The City requested and received a multi-year review and summary from CCC that outlined the expenditure of PEG fees. A review of the expenditures confirmed that services received by the City are consistent with rules, regulations, and laws concerning PEG fee expenditure. Moving forward, provisions in the CCC agreement require an annual report from CCC regarding expenditures.

FISCAL IMPACT

The cost of this agreement with Chabot-Las Positas Community College District will not exceed \$117,000 and is included in the City's FY 2020 Operating Budget. Authorizing this agreement does not require an additional appropriation. It is projected that the cost of this agreement will be offset entirely by the PEG revenues received from AT&T and Comcast.

NEXT STEPS

After partnering with CCC for the last nine years to provide education and public channel content production and broadcasting, staff recommends continuing this relationship with the

revised agreement and extending the revised agreement for four years to align with best practices in the industry.

If the Infrastructure Committee approves the agreement structure and language, staff will move forward with adding this item to the earliest available City Council consent calendar agenda. It might also be necessary to recommend updating the City's franchise ordinance, to reflect current franchise agreement termination dates. Introductions of ordinances are required to be agendized on the Legislative Business agenda or Public Hearing agenda. Staff will advise the Committee accordingly.

Prepared by: Nathaniel Roush, Information Technology Manager

Recommended by: Adam Kostrzak, Director of Information Technology/CIO

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAadoo', is written over a horizontal line.

Kelly McAadoo, City Manager