



# Mendocino County

## Legislation Text

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**File #:** 16-1151, **Version:** 2

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**To:** Board of Supervisors

**From:** Executive Office

**Meeting Date:** December 6, 2016

**Department Contact:** Christopher Shaver

**Phone:** 463-4441

**Item Type:** Regular Agenda

**Time Allocated for Item:** 15 min

**Agenda Title:**

Discussion and Possible Action Regarding the Allocation and Programming of Public, Educational and Governmental (PEG) Access Television Fees and Services in Mendocino County

**Recommended Action/Motion:**

Receive the discussion and provide possible direction to staff regarding the allocation and programming of Public, Educational and Governmental (PEG) Access Television fees and services.

**Previous Board/Board Committee Actions:**

The Board of Supervisors adopted a Franchise Agreement with Adelphia Communications on April 19, 2005. The Board of Supervisors approved a Franchise Transfer Agreement from Adelphia to Comcast in December 2005. A Memorandum of Understanding was executed between the City of Ukiah and the County pertaining to the disbursement of one-time PEG related capital grant funding for infrastructure, as well as designating the County as the PEG provider for the County including incorporated areas of the City of Ukiah. The County initiated a Request for Proposal (RFP) in 2007/2008 for the provision of PEG services within the County of Mendocino. As a result of this RFP, agreements were executed with PEG providers since 2007 (in the cities of Willits, Fort Bragg, and Ukiah).

**Summary of Request:**

The Board of Supervisors entered into a Franchise Agreement with Adelphia Communications in April 2005 for a fifteen year period. The Board also approved, in December 2005, a transfer of said Franchise Agreement from Adelphia to Comcast. In exchange for the right to provide cable services within the unincorporated areas of Mendocino County, the Franchise Agreement provides for the payment of franchise fees and requires Comcast to provide public, educational and governmental access channels (PEG). As also stipulated in the Franchise Agreement, Adelphia/Comcast is to make payments to the County as Grants for PEG Access Production and Programming Equipment. The capital grant funds for infrastructure were last paid in 2012 and pursuant to the Franchise Agreement no further capital grant funds are due to the County. The cities of Fort Bragg, Ukiah and Willits have similar agreements with Adelphia/Comcast with respect to Franchise Fees and Grants for PEG Access Production and Programming Equipment based on subscribership within the incorporated areas of each city.

The County, 2014 and prior, allocated its portion of the PEG funding based upon the percentage of subscribers in each of the regions composed of the Ukiah, Willits and Fort Bragg unincorporated areas to PEG providers. Willits Community Television, Mendocino Access Television (MATV) and Mendocino Coast Television (MCTV)

were selected as PEG providers as part of a County-wide request for Proposals (RFP) conducted in late 2007 and early 2008. The three selected providers entered into agreements with the County in November of 2008.

In July of 2013, MCTV voted to dissolve the 501(c)(3) non-profit corporation thus terminating their obligations to provide PEG services for Fort Bragg and the unincorporated region. From that point onward, the County allocated PEG funding to the providers for the Willits and Ukiah areas, due to MCTV's insolvency. The County entered into an agreement for FY 2015-16 with the City of Fort Bragg, which allocated County PEG funds to the City of Fort Bragg in an amount not to exceed \$21,556, as the City of Fort Bragg had expressed their desire to contract for PEG service in their area independently. For this current fiscal year (FY), the County will provide a portion of FY 2016-17 PEG funds to the City of Bragg in an amount not to exceed \$10,778.

In December of 2015, Mendocino Access Television (MATV) provided notice to the County that MATV would no longer be capable of providing services pursuant to the agreement. The County experienced service issues prior to the notification by MATV that led to the County assuming the Governmental portion (audio and video for public meetings) of PEG programming for the Ukiah area (especially for the Board of Supervisors meetings). Staff sought a legal opinion from Liebert Cassidy Whitmore (LCW) to ensure that the County acted in accordance regarding local and federal laws. LCW's legal opinion supports the County's current practice of solely providing the governmental portion of PEG programming. In addition, LCW reported that the County meets its obligations under the Franchise Agreement to use those funds for the express purpose of providing only the governmental portion of PEG programming county-wide. Mendocino County Code Title 13, Chapter 13.40.030(A) provides for governmental institutions to provide government access programming, which is the County's current practice. For FY 2016-17, the County is using a portion of the unincorporated allocation to fund the in-house PEG related services now being performed. MATV currently provides the Public and Educational component of PEG; however, the County has not provided any further funding due to MATV's organizational and financial instability. Staff has met with representatives from MATV on several occasions to discuss a business plan and the viability of MATV. However, MATV leadership is changing once again and the future of the organization is uncertain at this time.

A Memorandum of Understanding was executed between the City of Ukiah and the County pertaining to the disbursement of one-time PEG related capital grant funding for infrastructure, as well as designating the County as the PEG provider for the County, which includes the incorporated areas of the City of Ukiah. The one-time funding was allocated by Adelphia/Comcast as a lump sum in 2012 and funds were used for eligible infrastructure acquisitions and improvements. The MOU expires in 2020 and requires the County to provide PEG services until such date. The County would have to exercise provisions within the MOU to provide notice of termination if PEG services ceased to be offered in the Ukiah area. This MOU is the only obligation that the County has to provide PEG services. With the termination of this MOU, the County would have no further obligation to provide PEG services

Willits Community Television (WCTV) also receives a portion of County PEG funding on an annual basis. The County has a current agreement with WCTV that is set to expire on December 31, 2016, for an amount not to exceed \$25,000 for FY's 2015-16 through the first half of FY 2016-17; which staff will amend to extend the term of the agreement until June 30, 2017.

There are at least three possibilities the County may pursue in terms of Franchise Fees for PEG funding and services. The County receives, on an annual basis, Franchise Fees from Comcast for an amount based upon the number of subscribers in the unincorporated areas. The current trend for the last three years represents a decline in Franchise Fees for PEG due to fewer Comcast subscribers. In FY 2013-14 the fees received were \$183,446 compared to FY 2015-16 fees of \$182, 641. A portion of these fees are currently used to fund staffing and programming for the governmental portion of PEG, which includes the Board of Supervisors' meetings.

- The first option is to only provide the governmental programming portion of PEG and those services with County staff and equipment (thereby requiring the County to terminate the MOU with the City of

Ukiah regarding the provision of PEG services in the Ukiah area).

- The second option is to perform a county-wide RFP with the goal of obtaining a single service provider for the entire County.
- The third option is to issue an RFP for PEG services and enter into agreements with regional providers, which has been the past practice.

Staff recommends that the Board consider retaining the governmental portion of PEG in-house. In light of the fact that the County has no legal obligation to provide public access and that public access is minimally used, staff also recommends that the Board consider terminating the MOU with the City of Ukiah thereby eliminating our commitment to the City of Ukiah to provide public access through a third party contractor.

**Alternative Action/Motion:**

Direct staff to explore additional options and report to the Board at another date and time.

**Supplemental Information Available Online at:** N/A

**Fiscal Impact:**

**Source of Funding:** n/a

**Current F/Y Cost:** n./a

**Budgeted in Current F/Y:** Yes

**Annual Recurring Cost:** n/a

**Supervisory District:** All

**Vote Requirement:** Majority

**Agreement/Resolution/Ordinance Approved by County Counsel:** N/A

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**CEO Liaison:** Alan D. Flora, Assistant CEO

**CEO Review:** Yes

**Comments:**