



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2019

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Approve response to Marin County Civil Grand Jury Report *Marin's Telecommunications Disconnect*

RECOMMENDATION

Approve the response to the Marin County Civil Grand Jury Report *Marin's Telecommunications Disconnect*.

DISCUSSION

The Marin Civil Grand Jury issued the attached report *Marin's Telecommunications Disconnect* on June 13, 2019 and has requested that the Town of Fairfax respond to Recommendations R2, R3, and R4. The responses are attached for the Council's approval. Staff incorporated the MTA's Board responses into the Town's responses. While staff does not believe it is appropriate to implement the Grand Jury's recommendations at this time, we do believe the recommended concepts should be taken under advisement for future consideration when the timing is right, based on MTA's ongoing evaluation of its mission and structure.

The Town Council is required to respond in writing to Findings and Recommendations contained in Marin County Civil Grand Jury reports pursuant to Penal Code § 933.05.

FISCAL IMPACT

Staff time.

ATTACHMENTS

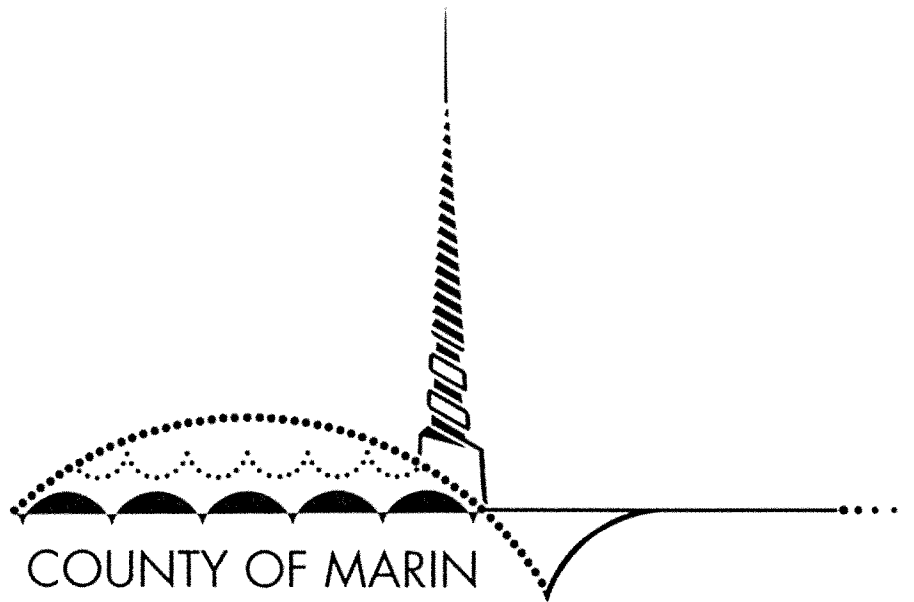
- A. Marin County Civil Grand Jury Report *Marin's Telecommunications Disconnect*
- B. Town of Fairfax Response to Marin County Civil Grand Jury Report

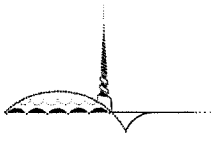
2018–2019 MARIN COUNTY CIVIL GRAND JURY

Marin's Telecommunications Disconnect

Report Date: June 6, 2019

Public Release Date: June 13, 2019





Marin's Telecommunications Disconnect

SUMMARY

Marin has been short-changed by a lack of telecommunications leadership by county and municipal officials. Because of this, the public does not have countywide fiber to the home and has only limited ability to aggregate demand. Aggregation strengthens the ability to negotiate cost, coverage, and other contractual terms with telecom providers. Our officials have turned over network development policy to commercial network providers, resulting in a patchwork of network services that benefit the companies' profit-making priorities. Our officials have not ensured that all county residents receive the best value in telecom services. Effective leadership that has technical expertise in telecom business, regulation, and technology is needed so that individuals, businesses, and government entities will better understand what is happening and what is possible, and choose what is best for all.

Major telecom opportunities were missed by existing agencies. Few applications were made for available federal and state funds to provide high quality broadband internet access to unserved and poorly served areas such as West Marin and the Canal Area of San Rafael. The opportunities to use existing fiber optic networks to provide broadband for businesses and residents were ignored. The opportunity to negotiate favorable terms for countywide 5G (the next generation cellular technology) installations was ineffectively addressed. A detailed review of 5G deployment issues is not included in this report in part because federal law precludes health effects from being used to prevent installation of cell phone transmitting stations.

The lack of countywide telecom leadership and coordination means that the various government entities did not and do not formally seek or use opportunities to plan and cooperate with each other.

The Marin Telecommunications Agency (MTA) was intended to provide leadership, coordination, and policy guidance in the county; however, it has abandoned these functions. With the MTA's originally stated mission, interested parties could have expected that countywide leadership was being provided. However, the MTA's Board decided over a decade ago to focus essentially on the collection and distribution of franchise fees and oversight of the Community Media Center of Marin and to ignore its policymaking leadership mission.

Marin County needs competent and effective guidance on telecom. The Board of Supervisors should set up a commission or a public advisory group to monitor telecom activities and propose appropriate actions to best serve the telecommunications interests of Marin's residents.

BACKGROUND

Through requests for investigation submitted by concerned members of the public and articles and opinion pieces in the Marin Independent Journal, the Marin Civil Grand Jury became aware that questions exist regarding the telecommunications services provided and the management of telecommunications by county and municipal agencies.

APPROACH

The Grand Jury used the following methods in developing this report:

- Interviewing representatives from public and governmental agencies, consultants and citizens.
- Attending public meetings of agencies and city councils.
- Researching websites.
- Examining documents.
- Reviewing documentation provided with citizens' complaints.

DISCUSSION

Telecommunications is ever more important to the functions of daily life. It is an essential medium affecting all sectors of the Marin community. Telecom technologies enable broadband transmission (capacity for sending high speed data over any medium), which can be in the form of coaxial cable, wireless radio, optical fiber, or satellite links.

The deployment of telecommunications technology in the county has been handled by several government entities:

- **Marin General Services Authority (MGSA)** is a Joint Powers Authority which was created in 2005 by the cities, towns, and the County of Marin to administer various public services effectively and efficiently throughout the county in a uniform manner with minimal overhead expense. The MGSA owns most of the street light poles in the county and licenses what is mounted on them, for example, 5G cellular equipment.
- **Information Services and Technology Department (IST)** of Marin County government focuses on government computing and communication needs. IST creates and maintains the infrastructure that supports official county services delivered through the Marin Information Data Access Services (MIDAS), which links county government, cities, and other institutions together in a shared high-speed network.
- **Community Development Agency (CDA)** protects public health and safety, preserves environmental quality, and plans sustainable, diverse communities. Among its responsibilities, the CDA controls the siting of cellphone towers within the county through land use regulation.

- **The Marin Telecommunications Agency (MTA)** was established in 1998 to negotiate, collect and disburse cable tv franchise fees and Public, Education and Government (PEG) fees, and to coordinate telecommunications issues for its members. It is a joint powers authority (JPA) that consists of Marin County and all the cities and towns in Marin, except Novato and Larkspur, which have separate cable franchise agreements. Its purpose, as published on the MTA website, is described as follows:

The mission of the MTA is to be the key policy-making and coordinating body related to telecommunications matters in Marin. This is in line with the core values that have defined the MTA throughout its history of promoting availability, accessibility, affordability and public inclusion in the advancement and enhancement of telecommunications infrastructure and services in Marin.¹

The MTA also established the Community Media Center of Marin (CMCM), which operates Marin TV. Created with PEG fees, CMCM is a non-profit corporation with its own board of directors, and is responsible for Marin County's non-commercial public access, educational and governmental cable channels. For example, residents can watch broadcasts of their town council and board of supervisors meetings on the CMCM government channel. It also provides residents with access to communication technologies, media training, and the latest digital tools to create original content for cable TV and online media.

None of these government agencies, individually or together, functions to ensure that Marin's residents, businesses, schools and county government enjoy the greatest benefit from telecom service providers and their technologies.

MTA's Changing Role

The MTA's role as the "key policy-making and coordinating body related to telecommunications matters in Marin," has changed. In September 2006, California enacted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). This legislation removed local bargaining power and mandated that the cable industry pay local governments a 5% franchise fee for allowing cable franchisees access to the public right of way and a 1% PEG fee to fund public access broadcasting. DIVCA was intended to even the telecom playing field and close the digital divide.²

Cable subscribers pay these fees as a percentage of the monthly bill they pay to the cable providers. They are based on only that portion of the provider's bill attributable to basic tier cable TV services, not the wi-fi, internet, and other services portions of the service bundle. The precise portion of the bill allocated for basic cable TV service among all the services provided is

¹ "Marin Telecommunications Agency." *Marin Telecommunications Agency*. Accessed 17 May 2019.

² "Video Franchising." *California Public Utilities Commission*. Accessed 17 May 2019.

proprietary information, so the exact total of fees paid by all subscribers in each jurisdiction is only verifiable by independent auditors.

As a consequence of DIVCA, the MTA changed its direction and focused primarily on the collection, distribution and auditing of the fees collected from Comcast, AT&T, and Horizon Cable TV. Essentially, the MTA's broader strategic role was reduced to monitoring and collecting streams of income from the telecom industry and receiving cable and internet complaints. Its mission of providing telecom policy leadership has not been carried out. The individual members of the JPA (the towns, cities and county) have expressed no interest in paying any portion of their income for telecom policy purposes, preferring instead to maximize distributions to the JPA members' general funds.

As for handling complaints, the MTA's consumer support consists of offering a link on its website to connect consumers directly to the complaint pages of the websites of AT&T, Comcast, and Horizon and providing an MTA general complaint form on a separate page on its website. As a test, the Grand Jury sent in a consumer complaint to the MTA on its general complaint form, and, to date, no response has been received.

After deductions for overhead and professional costs, the MTA distributes the net proceeds of the franchise fees to the general funds of its constituent government members, and it uses the PEG fees to fund the capital costs of public access broadcasting by CMCM. The MTA budget covers hiring an outside accounting firm to audit the fees due from the cable franchise companies and the costs of running an office with a part time executive director and some clerical support. The overall cost of running the MTA amounts to over \$200,000 per year, a significant expense for MTA's largely ministerial role.

Even these limited functions of the MTA are unlikely to survive into the future because the continued payment of these fees by the cable companies is unlikely to last. With the availability of broadband streaming services, consumers are now "cutting the cord," so the payment of franchise fees is declining and is likely to eventually cease altogether. Additionally, the cable companies are challenging their obligation to pay the franchise fees at all, claiming that it is anticompetitive compared to other non-cable providers, such as DirecTV and DISH. Added to all of this, cable providers may be able to offset some of the amount paid to the MTA because the FCC has ruled that providers may charge entities like Marin TV for use of the providers' facilities to distribute the entities' content. The future of this income stream to local governments is in jeopardy which brings even the diminished function of the MTA into question.

Detrimental Results and Missed Opportunities

As a result of the lack of coordinated and properly supported oversight, the county has not taken advantage of important opportunities:

- Each municipality has negotiated separately with telecom providers and the potential benefits of a proactive strategy and aggregation have been lost. For example, cities are separately engaging legal counsel in determining local rules for deploying 5G technology. Additionally, there is no coordinated strategy for investigation of the use, benefits, detriments or installation of this technology.
- Exclusive use of six strands of optical fiber alongside the SMART tracks was offered to Marin County to service its telecom needs free for 20 years by SONIC, but these fibers have sat idle for several years.
- Only a few attempts were made belatedly by the MTA to connect the existing Skywalker Ranch broadband fiber network to underserved communities in West Marin. Nicasio and Bolinas did succeed in getting fiber to the home projects going with support and partial funding by the California Public Utilities Commission and the County of Marin and with support from Marin County's Information Systems and Technology Departments.^{3,4}
- The MTA made no application for Obama-era funds specifically dedicated to the delivery of broadband to underserved and unserved areas, such as the Canal area of San Rafael and West Marin.⁵ California Public Utilities Commission (CPUC) funds were also available, though again, the MTA for the most part, did not apply for them.⁶

The MTA took no advantage of these opportunities, offered no strategy to the cities and towns of Marin, and provided no oversight of telecommunications services for Marin County as a whole. Unlike the City of San Jose that, as an example of proactive telecom planning, negotiated agreements for 5G cellular deployment with Verizon, Mobilitie and AT&T to ensure service to all areas of the city so that redlining (not providing service to less profitable areas) was prevented. Additionally, the vendors will be contributing to a \$24M Digital Divide Fund for San Jose over the next decade that will support programs and initiatives for residents who lack access to broadband internet services.⁷

³ Avants, Maggie. "Skywalker Ranch Broadband Carrier Tapped for New Nicasio Network." *Patch*. 15 July 2016.

⁴ Evans, Beau. "West Marin's Internet woes and hopes." *Point Reyes Light*. 25 Jun. 2015.

⁵ "Secretary Locke Announces Recovery Act Investments To Expand Broadband Internet Access And Spur Economic Growth." *National Telecommunications and Information Administration*. 27 Sep. 2010.

⁶ "California Advanced Services Fund (CASE) Grant Program and Revolving Loan (California)." *Grants Office*. Accessed 17 May 2019.

⁷ "City of San Jose Announces Major Agreements with Verizon, AT&T & Mobilitie to Significantly Enhance Broadband Infrastructure in San Jose." *City of San Jose*. 15 Jun. 2018.

JPA Structural Limitations

JPAs exist in special obscurity because their directors are elected to other councils or boards from which they are assigned to serve on JPA boards. The MTA is an example of this. Its members — the County of Marin, and the cities and towns of Belvedere, Corte Madera, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito and Tiburon — each appoint one of their council members to the MTA board. No council candidate campaigns on issues related to a JPA because their election to a city or town council does not guarantee appointment to any specific JPA board. As a consequence, it is unlikely that JPA board members would have telecommunications expertise, and in fact, they do not.

Possible Solutions

What can the county do to ensure that future telecom opportunities and benefits are not missed? What organization would be suited to oversee the provision of the best telecom services (such as broadband internet, television programming, 5G, or future telecom technologies) in the best possible way?

Whatever form it takes, the county needs competent guidance and leadership in technical, business and regulatory matters regarding telecom. Simply allowing market forces to determine telecom deployment without government intervention will produce service area gaps that leave less populated communities without connection — as has occurred in the more remote areas of Marin County. Dense population areas are more profitable for telecom providers because they can get the highest returns on the costs of extending their infrastructure and siting their equipment.

To address these issues, the Grand Jury proposes that a citizen advisory commission be created to monitor and address telecom matters for the whole county. The commission should be made up of members of the public who have the interest and expertise to provide advice on telecom issues.

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.
- 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.
- 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.
- 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.
- F5. CMCM is a nonprofit tax-exempt corporation which is governed by its own board so it could operate without MTA oversight.
- 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.
- 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.
- F8. The county could benefit from strategic guidance and leadership in technical, business and regulatory matters regarding telecommunications for its businesses and residents.

RECOMMENDATIONS

- 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.
- R2. The MTA's franchise fee collection and disbursement responsibilities should be moved to the MGSA.
- R3. MTA's responsibilities for CMCM should be terminated.
- R4. The MTA should be dissolved.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- Marin County Board of Supervisors (R1, R2, R3, R4)
- Marin Telecommunications Agency Board of Directors (R2, R3, R4)
- Belvedere City Council (R2, R3, R4)
- Corte Madera Town Council (R2, R3, R4)
- Fairfax Town Council (R2, R3, R4)
- Mill Valley City Council (R2, R3, R4)
- Ross Town Council (R2, R3, R4)
- San Anselmo Town Council (R2, R3, R4)
- San Rafael City Council (R2, R3, R4)
- Sausalito City Council (R2, R3, R4)
- Tiburon Town Council (R2, R3, R4)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

The following individuals are invited to respond:

- CIO, County of Marin
- General Manager, Sonoma Marin Area Rail Transit (SMART)

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

TOWN OF FAIRFAX RESPONSE TO GRAND JURY REPORT RECOMMENDATIONS

2018-2019 Marin Civil Grand Jury Report *Marin's Telecommunications Disconnect*

The Marin County Civil Grand Jury recommends the following:

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

This recommendation should be taken under advisement for future consideration.

The MTA reports that an evaluation has been done over the past few years regarding the moving of MTA's functions to MGSA. 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.

Based on the MTA's evaluation, the Town finds that it would not be appropriate for MGSA to assume MTA's responsibilities at this time. However, the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.

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

This recommendation should be taken under advisement for future consideration.

The MTA reports that 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.

The Town supports the MTA's analysis of its responsibilities for CMCM, but also believes the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.

R4. The MTA should be dissolved.

This recommendation should be taken under advisement for future consideration.

The MTA indicates it considered structural options in its Strategic Plan revision in 2016 (and again in 2018) and concluded that such an action would not be in the best interests of its ten jurisdictions. Please reference response to Recommendation 2 above for more information pertaining to this matter.

As mentioned 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.

Based on the MTA's evaluation, the Town finds that it would not be appropriate for MTA to be dissolved at this time. However, the concept may warrant further consideration in the future based on the MTA's ongoing evaluation of its mission and structure.