

**AGENDA REGULAR MEETING
PASADENA COMMUNITY ACCESS CORPORATION
Tuesday, February 2, 2016
7:00 p.m. at 150 S. Los Robles, Suite 101**

BOARD OF DIRECTORS

Ann Marie Hickambottom (District 1)
Tom Majich, Treasurer (District 2)
Robert Oltman (District 3)
Howie Zechner, Vice-Chair (District 4)
Yuny Parada (District 5)
Tim Winter (District 6)
Vacant (District 7)
Gail Schaper-Gordon, Chair (Mayor's Representative)
William Boyer, Secretary (City Manager's Office Representative)
Beth Leyden (PUSD Representative)
Alexander Boekelheide (PCC Representative)

STAFF

Chris Miller, Interim Executive Director

MISSION STATEMENT

The Pasadena Community Access Corporation is dedicated to the community access function of the Pasadena Telecommunications system and shall be operated exclusively for charitable, scientific, literary and educational purposes. In fulfilling these purposes, the corporation shall strive to achieve communication, facilitation, and development of media skills toward the ends of self-expression and community cohesion and improvement.

Item on the agenda may not be called in order listed.

Agendas and supporting documents are available on the Internet at
<http://www.pasadenamedia.org>

Materials related to an item on this Agenda submitted to Pasadena Media after distribution of agenda packet are available for public inspection in the Pasadena Media Administrative office at 150 S. Los Robles Avenue, Suite 450, Pasadena, during normal business hours.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact PCAC at (626) 794-8585. Notification 24 hours prior to the meeting will enable PCAC to make reasonable arrangements to assure accessibility to this meeting.

DISTRIBUTION:

PCAC Board of Directors
City Council
City Manager
City Attorney
City Clerk
Central Library
Public Information Officer

Neighborhood Connections
Los Angeles Times
Pasadena Star News
Pasadena Journal
Pasadena Weekly
Pasadena Now

**NOTICE OF REGULAR MEETING
PASADENA COMMUNITY ACCESS CORPORATION (PCAC)
BOARD OF DIRECTORS**

NOTICE IS HEREBY GIVEN that a regular meeting of the Pasadena Community Access Corporation (PCAC) Operating Company (dba Pasadena Media) is scheduled for **Tuesday, February 2, 2016**, starting at **7:00 p.m.**, at **Pasadena Community Access Corporation** located at **150 S. Los Robles Ave., Ste. 101, Pasadena, CA 91101**.

AGENDA

PUBLIC MEETING

- INTRODUCTION OF NEW MEMBERS/CALL TO ORDER/ROLL CALL
- APPROVAL OF JANUARY 5, 2016 BOARD MEETING MINUTES
 - Motion to Approve
- PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA - Please limit comments to three minutes each.
- TREASURER REPORT: Tom Majich
- EXECUTIVE DIRECTOR REPORT
- OLD BUSINESS
 - BOARD DISCUSSION ON HOW/WHEN TO LIST BOARD AGENDA ITEMS RELATING TO COMMITTEE AND CHANNEL DIRECTOR REPORTS
 - Action Item
- NEW BUSINESS
 - CHANNEL MANAGERS' REPORT - PCAC PEG CAPITAL FUND REQUEST TO PURCHASE AND INSTALL BRAINSTORM INFINITY SET AND ROBOTIC CAMERA SYSTEM FOR NEW MEDIA STUDIO AT PASADENA MEDIA, NOT TO EXCEED \$41,000.00
 - Action Item
 - THE ARROYO CHANNEL POLICY MANUAL AD HOC COMMITTEE REPORT
 - Information Item
- ANNOUNCEMENTS BY BOARD MEMBERS AND STAFF
- ADJOURNMENT

Gail Schaper-Gordon, Chair, PCAC Board of Directors

I HEREBY CERTIFY that this notice, in its entirety, was posted on both the Council Chambers Bulletin Board, Room 247, and the Information Kiosk (in the rotunda area), at City Hall, 100 N. Garfield Ave., Pasadena, CA, in Pasadena Community Access Corporation Suite 450 and 101, and a copy was distributed to the Central Library for posting on this 29th day of January, 2016.

Quyen Lovrich, Office Manager

PASADENA COMMUNITY ACCESS CORPORATION (PCAC)

MINUTES FOR THE REGULARLY SCHEDULED MEETING OF THE PCAC BOARD OF DIRECTORS, REGULAR MEETING, JANUARY 5, 2016

MEETING HELD AT PCAC, 150 S. LOS ROBLES AVE., SUITE 101, PASADENA, CALIFORNIA, 91101

NO CLOSED SESSION OR SPECIAL MEETING SCHEDULED

MINUTES FOR THE REGULAR MEETING OF JANUARY 5, 2016 PER THE POSTED AGENDA AS FOLLOWS

1. CALL TO ORDER/ROLL CALL/INTRO OF NEW BOARD MEMBERS

Board Chair Gail Schaper-Gordon called meeting to order at 7:05 p.m.

Roll Call of Board Members & Staff:

Ann Marie Hickambottom, District 1, present
Tom Majich, Treasurer, District 2, present
Robert Oltman, District 3, present
Howie Zechner, District 4, present
Yuny Parada, District 5, present
Tim Winter, District 6, present
District 7, vacant
Gail Schaper-Gordon, Chair, Mayor's Representative, present
Beth Leyden, PUSD Representative, present
Alexander Boekelheide, PCC Representative, present
William Boyer, Secretary, City/City Manager Representative, present
Chris Miller, PCAC Interim Executive Director, present
Javan Rad, City Attorney's Office, present

2. APPROVAL OF Dec. 1, 2015 minutes for regularly scheduled meeting and special meeting

Approved as presented and corrected – correct regular meeting minutes to reflect Tom Majich present; correct special meeting meetings to reflect Beth Leyden present.

Motion to approve by Winter, second by Zechner

3. PUBLIC COMMENT ON MATTERS NOT ON AGENDA

No public speakers on Public Comment.

4. TREASURER'S REPORT

As presented to Board per agenda packet. Informational item only. No formal Board action taken.

5. EXECUTIVE DIRECTOR'S REPORT

As presented to Board per agenda packet by Interim ED Miller. Informational item only, no formal Board action taken.

Board Chair Schaper-Gordon asked that Miller call together an ad hoc meeting of the Channel Managers to discuss the 1 percent PEG funding monies for the purposes of drafting a proposed policy and written "check list" on how Channel Managers determine recommendations for PEG funding.

6. OLD BUSINESS –none

7. NEW BUSINESS

A) PEG FUNDING FOR EMERGENCY PUBLIC INFO EQUIPMENT, NOT TO EXCEED \$10K

Majich moved; second by Oltman

B) AUTHORIZATION TO ENTER INTO CONTRACT FOR EXECUTIVE DIRECTOR SEARCH SERVICES

Majich moved; second by Hickambottom to move forward with finalizing a professional services contract for Executive Director recruitment; Majich to provide contract and terms; plus outline of next steps with selected firm to be brought back to Board for Feb. 2 meeting.

Motion passed 9-1 in favor, with Zechner opposed.

One public comment (Dean Lee) speaking in favor of hiring only a local person with local awareness and for an open recruitment process involving community and producers who provide content for the Arroyo Channel.

8. ANNOUNCEMENTS BY BOARD MEMBERS AND STAFF

Zechner requested to have two agenda items placed on next Board agenda:

1) Producer's Handbook update

2) Revision of agenda organization to include placing all regular Standing Committees; Ad Hoc Committees and Channel Managers for KPAS, KPCC-TV, ARROYO and KLRN as regular, re-occurring agenda items.

Zechner to provide agenda reports/materials for items & discussion.

9. FUTURE MEETING DATES

- Feb. 2, 2016, 7 p.m., PCAC, 150 S. Los Robles, Suite 101
- March 1, 2016, 7 p.m., PCAC. 150 S. Los Robles, Suite 101

10. ADJOURMENT

Oltman moved; Boyer second. Meeting adjourned 8:42 p.m.

Pasadena Media
STATEMENT OF FINANCIAL POSITION
As of January 31, 2016

	TOTAL	
	AS OF JAN 31, 2016	AS OF JUN 30, 2015 (PP)
ASSETS		
Current Assets		
Bank Accounts		
A103 Petty Cash	200	200
A104 Bank of America Checking (1018)	317,179	184,510
A107 Bank of America Capital - Restricted (9451)	192,176	91,434
A108 A108 Bank of America Savings (0990)	100,059	100,022
A110 Paypal	3,059	0
A120 Pex Debit Card	2,270	258
Total Bank Accounts	\$614,944	\$376,425
Accounts Receivable		
A200 Accounts Receivable	8,605	119,042
Total Accounts Receivable	\$8,605	\$119,042
Other current assets		
A300 Prepaid Insurance	1,972	1,972
A350 Security Deposit	1,000	1,000
A370 Undeposited Funds	88	425
Total Other current assets	\$3,060	\$3,397
Total Current Assets	\$626,608	\$498,864
Fixed Assets		
A132 Production Equipment	265,119	263,074
A136 Accumulated Depreciation	-84,970	-84,970
Total Fixed Assets	\$180,149	\$178,104
TOTAL ASSETS	\$806,757	\$676,967
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable		
L100 Accounts Payable	0	2,009
Total Accounts Payable	\$0	\$2,009
Other Current Liabilities		
L210 Payroll Liabilities	30,114	24,389
L211 Other Payroll Liabilities	250	0
L212 Accrued Vacation	15,375	15,375
L212.1 Accrued Salaries & Wages	4,678	4,678
L220 Deferred Income	298,908	298,908
Total Other Current Liabilities	\$349,325	\$343,349
Total Current Liabilities	\$349,325	\$345,359
Total Liabilities	\$349,325	\$345,359
Equity		
Q300 Opening Bal Equity	-36,271	-36,271
Q310 Retained Earnings	367,880	367,880
Net Income	125,824	
Total Equity	\$457,432	\$331,609
TOTAL LIABILITIES AND EQUITY	\$806,757	\$676,967

Pasadena Media
BUDGET VS. ACTUALS: PCAC BOARD APPROVED - FY16 P&L
July 2015 - July 2016

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
Income			
I515 Contributions Income	98.25	2,500.00	3.93 %
I531 City of Pasadena Agreement	720,000.00	960,000.00	75.00 %
I535 Interest Income	37.29	1,000.00	3.73 %
I537 Miscellaneous Income	283.86		
I539 Program Services	4,325.00	6,500.00	66.54 %
I543 Production Services	15,741.38	38,000.00	41.42 %
I547.1 Equipment Auction	4,365.28	1,000.00	436.53 %
Total Income	\$744,851.06	\$1,009,000.00	73.82 %
Gross Profit	\$744,851.06	\$1,009,000.00	73.82 %
Expenses			
E800.1 General Expenses	481,230.08	713,112.00	67.48 %
E819 Fundraising Expense	4,141.26	12,200.00	33.94 %
E847 Miscellaneous	300.00		
E858 Production Expense	913.27	17,000.00	5.37 %
E860 Administrative Expenses	6,615.09	43,800.00	15.10 %
E865.2 Occupancy	136,658.00	222,888.00	61.31 %
Payroll Expenses	135.61		
Penalties	1,072.63		
Total Expenses	\$631,065.94	\$1,009,000.00	62.54 %
Net Operating Income	\$113,785.12	\$0.00	0.00%
Other Income			
I999 PEG Capital Income Recognized		30,000.00	
Total Other Income	\$0.00	\$30,000.00	0.00%
Other Expenses			
E904 PEG Capital Equipment Expense	4,912.24	30,000.00	16.37 %
Total Other Expenses	\$4,912.24	\$30,000.00	16.37 %
Net Other Income	\$ -4,912.24	\$0.00	0.00%
Net Income	\$108,872.88	\$0.00	0.00%

Monday, Feb 01, 2016 12:22:20 AM PST GMT-8 - Accrual Basis

DIRECTOR'S REPORT

- Respectfully submitted by Chris Miller

Interim Executive Director – Pasadena Community Access Corporation

The Pasadena Community Access Corporation Board of Directors Meeting

Tuesday, February 2, 2016 – 7:00pm

ANNOUNCEMENTS – Registration is now open at acmwest.org for the Alliance for Community Media Western States Region conference in Honolulu March 16-18. Early bird rates expire February 12.

KEY ACHIEVEMENTS:

Board

- Channel Managers Meeting with Alex Boekelheide, William Boyer and Beth Leyden
- Meeting with Gail Schaper-Gordon

Facility

- City DoIT Fiber Project - Discovery re: Fiber Path

Financial

- Meeting with City Controller re: Audit Draft
- Meeting with Accountant Mike Noll
- Submitted MD&A and Audit Draft Corrections to LSL CPAs
- 990 Tax Filing Preparation in Progress for Feb. 15 Extension Deadline
- Prepared Budget Forecast for FY16

Partnerships/Networking

- City DoIT Council Chamber Upgrade Project Consulting
- Meeting with AbilityFirst

Personnel

- Pre-Production Process Training
- RueShare Preparation

Producer/Member Relations

- Weekly eblasts including new videos

Productions

- State of the City
- “Are We Earthquake Ready?” Community Forum
- Black History Month Kickoff Events - Opening Reception and Red, Black & Green Honors Dinner

Attached: Operations Report, Production Services Report, Member Services Report, Cable Complaints, Letter from ACM President Concerning CA Attorney General Opinion Re: PEG Franchise Fees

Operations Report

Prepared by Chris Miller – January 2016

Notable Operations Projects and Their Statuses Conducted During January

- City Council Chamber Meeting Management Upgrade: Completed
- Fiber Project / PasadenaMedia.org Streaming Issues: Ongoing
- Studio B Project: Proposal Ready
- New Member Management & Reservation System: Developer Tweaking
- New Production Season: Successfully Underway

1. City Council Chamber Meeting Management Upgrade: Completed - Despite programming not being completed on time, the first City Council meeting with the new equipment on January 11th went well. Two days later, a partial system failure caused the installer to resume programming at an accelerated rate. Programming was finished on January 21st. While the new system is not without faults, all interested parties seem pleased with the technology.

2. Fiber Project / PasadenaMedia.org Streaming Issues: Ongoing - DoIT conducted at least three site visits in January to determine available fiber strands, but have they not yet concluded discovery. Stream uptime continues to improve as staff settles into a regular process for checking channel feeds. The choppyness we've experienced for the past few months has largely subsided. We will continue to explore fiber connectivity, as this will allow us to increase bitrates for consistently higher quality channel streams as well as address other bandwidth needs.

3. Studio B Project: Proposal Ready - Brainstorm approached staff with a deal for an innovative virtual set system shortly after the ACM Conference. This system would provide an ideal space for various types of KPAS productions, our numerous single-person community shows and some of our more adventurous community producers. I have included a proposal with this report for the Channel Managers to review this month in order to go to the board for approval in February.

4. New Member Management & Reservation System: Developer Tweaking - While training on RueShare, a few areas were found not to our liking. We have been working with the developer to iron out these areas. Our goal of rolling out online access to our members in February for reservations and some production management functions including volunteer coordination remains, though it will likely be late in the month. Once these issues are rectified, we will be able to discontinue the use of several systems that this is replacing.

5. New Production Season: Successfully Underway - Members have returned to production for the new season. The biggest change from last season is the availability of expanded pre-production materials. Beyond the recruitment of volunteer crew members, incomplete or insufficient pre-production was the biggest issue preventing successful productions last season. While most producers have been receptive, the higher level of detail takes some time to acclimate too. It will take several productions before most will fully reap the benefits, though some are already apparent. A few producers opted to skip this process in favor of a predetermined set of parameters such as a standard light plot and generic set.

Pasadena Media Production Report January 2016

Studio Productions:

1/6: Is It Reasonable- Producer: Walter Brown
1/7: Billy Mitchell Presents- Producer: Billy Mitchell
1/8: Smile and Spread a Little Joy- Producer: Debra Johnson
1/9: Eddie's Gospel Hour- Producer: Eddie Fulton
1/9: Skee Love's House of Hip Hop- Producer: Lonnie Lee
1/10: Birthright- Producer: Stephanie Cunningham
1/11: Riq the Critic- Producer: Wannetta Benton
1/14: Tongues of Fire-Producer: Rob Reyes
1/16: Yeshua Ministries- Producer: Denise Maiden
1/17: Quality Sketch- Producer: Jarred Hodgdon
1/19: Crossing Bridges- Producer: Nat Nehdar
1/20: The People's View- Producer: Macheo Shabaka
1/21: Choices- Producer: Marion Cathcart
1/21: Thursday Night Live- Producer: Jeff Hodge
1/22: The Show and Tell Show- Producer: Caroline Elliot
1/23: In the Kitchen- Producer: Barbara Shay
1/23: WOW- Producer: Malika Hendry
1/24: The Nowman Show- Producer: Dan Niswander
1/27: The Conner Bubble- Producer: Joe Conner
1/28: Sounds Within- Producer: L.V. Smith

20 Studio Productions

KPAS/City/Outside Productions:

1/1: Rose Parade and Rose Bowl
1/11: Pasadena City Council Meeting
1/12: Design Commission Meeting
1/13: Planning Commission
1/14: Cultural Arts Department Art Reveal
1/18: MLK Celebration
1/19: Altadena Town Council Meeting
1/20: FPRS Meeting
1/20: State of the City Meeting
1/25: Pasadena City Council Meeting
1/26: Design Commission Meeting
1/26: Police Oversight Meeting

1/27: Planning Commission

1/27: EdTech Meeting

1/28: Transportation Advisory Committee Meeting

1/28: District 4 Community Meeting

1/29: Black History Month Planning Committee Opening Reception

1/30: Red, Black and Green Honors Dinner

18 City/KPAS Productions Covered



PASADENA MEDIA

Member Services Report for the month of January 2016

Channel Programming Reporting:

The Arroyo Channel 744 - Hrs. of Programming

New Producer	Returning Producer	New Series	New Local Episodes	New Local Bicycled Episodes	New Regional Episodes (LA County)
5	5	2	32	45	2
New National Episodes	LIVE Show				
0	0				

Media Training Courses:

We provide the most accessible, valuable training and services to the residents of Pasadena is an established and continual goal of Pasadena Media. The Community Television & Digital Production training courses provides real hands-on experience along with an overview of studio production techniques, theory and community access guidelines.

Orientation	10
Producing - Session 1	7
Producing - Session 2	7
Studio Camera	4
Floor Manager	4
Director	2
Lighting	3
Audio	2
Character Generation	2
Field Production	1
Editing Session A	5
Editing Session B	5

Trained Pasadena Media Listed Volunteers: 42

Pasadena Media Website Analytics

Pasadena Media Social Network members:

203 members

Total Visitors	Device Usage		Peak Visitors: Jan 21
1296	Computer 87%	Mobile & Tablet 13%	73

Social Media Marketing:



1337 Followers



760 Likes



432 Followers



Scale 1 to 100 - Klout is a tool that measures social influence across the internet. Higher the Klout score, the higher the social influence.

Score 52.86 - 54% of our influence is from: Instagram

90-Day Score History - Last Updated: 1/27/2016

90-day High Score: 57.95 90-day Low Score: 51.76

Pasadena Media Networking Group (Meetup.com):

100 Media Enthusiasts

Special Events:

Webs: Form Response

notifications@webs.com <notifications@webs.com>

Tue, Jan 5, 2016 at 1:31 PM

Reply-To: form-processor@webs.com

To: chris@pasadenamedia.org

webs

Login

Form Response Notification

The following form has been submitted from your website

<http://www.pasadenamedia.tv/>:

Full Name : Nancy Toyota

Phone : (818)667-7056 cell (213)683-1480 wk (day)

Email : nancytoyota@gmail.com

Location where the problem occurred. : Home

Choose your Cable Provider : Charter

Address : Mailing address: 3408 Figueroa St.

Glendale, CA 91206

Property address: 2005 Lida St

Pasadena, CA 91103

Type of Issue : Installation

Description of Complaint : We live next to the City of Pasadena reservoir in Linda Vista. Charter says they have to go under the city driveway/access road to get cable to our house at a total cost of \$5,500, \$2,500 would be charged to us. I've been working with Charter and their construction department for 3 months now without ability to get internet to our home. Direct TV cannot get internet/WiFi to our home.

Resolution Requested : Can Pasadena Media help me by trenching under the driveway to our property so we can have access to cable? We are without TV or internet access at the moment.

Thank you in advance for your prompt attention.

Nancy Toyota

Webs: Form Response

Herrera, Eva <Eva.Herrera@charter.com>
To: Chris Miller <chris@pasadenamedia.org>

Mon, Jan 11, 2016 at 2:30 PM

Chris – This complaint has been addressed and resolved..

Construction Manager Henry Martinez re-evaluated the construction design and cost estimate (below) to provide service to Ms. Toyota residence. The cost estimate is correct. Mr. Martinez also confirmed, the path would cross under the neighbor's driveway, not the cities.

- Note, the neighbor refuses to grant permission and access to go under the driveway.

As mentioned to you during our short phone conversation last Friday, Ms. Toyota is aware of the cost and the fact that she would be responsible for a portion of it. She however doesn't agree, she feels the City should cover her portion, just like it was done for some of her neighbors.

Take a look at the email and design below, provided by construction manager and let me know if you have any questions.

Thanks,

Charter
COMMUNICATIONS

Eva Herrera |Customer Service Specialist
Government Affairs |626.430.3324
4781 Irwindale Avenue, Irwindale, CA 91706

From: Henry S
Sent: Thursday, January 07, 2016 4:20 PM
To: Herrera, Eva; Reick, Jim F; Carreon, Johnny F
Cc: Juan R
Subject: RE: Webs: Form Response

Eva,

This is a 65201 issue as that is the closest plant serving this area.

This was a Serviceability request, the customer was asking for service but there was no available tap.

If we can serve a customer Charter will pay up to \$3,000 for a plant extension, any cost over this would be paid by the customer.

We look for the least expensive way to feed the customers.

In this case it is an underground drop from the existing tap in a vault at the street, cost is \$5,419, see diagram below.

This path would cross under her neighbor's driveway, not a city driveway or access road, her neighbor refused permission.

Any other path, whether underground or aerial, would add thousands of dollars to the cost.

She refuses to pay any amount over the \$3,000 so we will not build the extension to service her, this is Charter Policy.

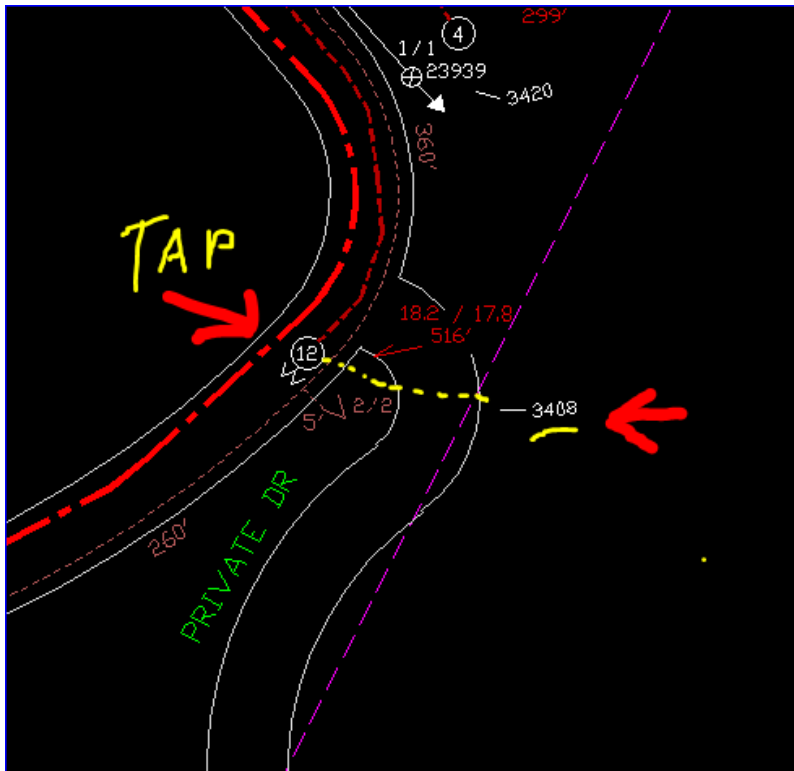
As I said, this statement is not true: "Charter says they have to go under the city driveway/access road to get cable to our house"

This is all on private property, the city would not build on private property and besides part of the work would be in Glendale and part would be in Pasadena.

Purple line in map below is the city boundaries.

3408 is circled in the picture below.

Henry



From: Herrera, Eva
Sent: Thursday, January 07, 2016 8:57 AM
To: Juan R
Cc: Henry S
Subject: FW: Webs: Form Response

Good Morning Juan, are you familiar with this non-serviceable address? Is there any information you can share, if you are?

Eva

Webs: Form Response

notifications@webs.com <notifications@webs.com>

Thu, Jan 28, 2016 at 4:04 PM

Reply-To: form-processor@webs.com

To: chris@pasadenamedia.org

webs

Login

Form Response Notification

The following form has been submitted from your website

<http://www.pasadenamedia.tv/>:

Full Name : Doug McNaughton

Phone : [626-799-2248](tel:626-799-2248)

Email : refusetoprovide@mail.com

Location where the problem occurred. : Home

Choose your Cable Provider : Charter

Address : 1205 S Oakland Ave

Pasadena, CA 1106

Type of Issue : Poor Audio Quality

Description of Complaint : Mr. McNaughton's home phones get dial tone but calls don't connect today. This has been an intermittent issue over 3 years. The only call that did connect today was when he accidentally called 911 instead of 411 this morning, but the operator could not hear him. This resulted in a Police Officer showing up at his door, so location services apparently still work. In addition, cable channel 50 is blurred and audio distorted beyond comprehension, but other channels are okay.

Resolution Requested : According to a technician Mr. McNaughton spoke with, the Barker Alley cable needs repair or replacement. Ultimately, he would simply like his phone and cable TV service restored to full functionality ASAP.

January 25, 2016



Alliance for Community Media

Promoting Civic Engagement Through Community Media

Letter from the President

It's the Law: Some Good News for California Communities

It took about a year and a half, but California Attorney General Kamala Harris's Office came forward with a ruling this month that supports the right of local communities to use PEG fees to support PEG.

At stake was the 1% PEG fee on cable bills that communities can still collect under the State franchising law passed ten years ago - a fee paid in exchange for the right to use public property to make money under the cable franchise law.

And who was against the rights of California communities to collect what they were legally entitled to under the law?

That would be Charter Communications.

Charter has been unilaterally withholding PEG payments to communities in California - making the spurious claim that PEG Fees were a tax and that local voters had to first pass a referendum with a super-majority to support these services.

The Attorney General's office summarily rejected Charter's version of California law, rightly noting that the fee is not levied as a tax, but comes as a result of the Franchise. You can find the opinion here: <https://oag.ca.gov/system/files/opinions/pdfs/13-403.pdf>

Whether this settles the matter is unclear: Will Charter actually comply with California law and pay the rent that's due?

Let's see. Hopefully they will start paying what's legally due to communities in San Luis Obispo County, Santa Cruz County, Lake County and other locales. Many California communities are financially strapped and have been hurt by Charter's creative interpretation of the law.

And in the meantime, maybe it isn't a good idea to reward a company that doesn't comply with the law...so maybe the California PUC and federal regulators should take a look at this question as they weigh the proposed Charter - Time Warner merger.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Wassenaar", with a long horizontal flourish extending to the right.

Mike Wassenaar
President

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 13-403
	:	
of	:	January 15, 2016
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
ANYA M. BINSACCA	:	
Deputy Attorney General	:	
	:	

THE HONORABLE ANITA GRANT, COUNTY COUNSEL, COUNTY OF LAKE, has requested an opinion on the following question:

Does Proposition 26 require voter approval before a county board of supervisors may enact an ordinance that would require a cable television franchise holder providing service in the county to pay a “public, educational, and governmental access fee,” equal to one percent of the “holder’s gross revenues,” to the county as authorized under California’s Digital Infrastructure and Video Competition Act?

CONCLUSION

Proposition 26 does not require voter approval before a county board of supervisors may enact an ordinance that would require a cable television franchise holder providing service in the county to pay a “public, educational, and governmental access fee,” equal to one percent of the “holder’s gross revenues,” to the county as authorized under California’s Digital Infrastructure and Video Competition Act.

ANALYSIS

We are again confronted with the question whether a particular governmental charge constitutes a “tax,” which under the state Constitution must be approved by the voters.¹ In this instance, a county proposes to enact an ordinance that would require a cable television company to pay the county a fee—based on a percentage of the company’s gross revenues—that is authorized under state and federal law to fund and support public, educational, and governmental access programming. We conclude that such a fee is not a “levy, charge, or exaction . . . imposed by a local government” so as to constitute a local tax within the meaning of the relevant state constitutional provisions. We explain our reasoning in greater detail below.

Constitutional requirements of voter approval

Beginning in 1978, California voters passed a series of initiatives amending the state Constitution to limit state and local authority to increase taxes. The first of these, Proposition 13, consisted of an “interlocking ‘package’” intended to provide real property tax relief.² Proposition 13 added new constitutional article XIII A, which contains “a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4).”³ Sections 1 and 2 limit property taxes directly. Sections 3 and 4 restrict the raising and imposition of other taxes and levies that might be used to replace the lost property taxes: section 3 requires that any new or increased state taxes be approved by two-thirds of the Legislature, and section 4 requires that any locally imposed “special taxes” be approved by two-thirds of the voters in the affected district.⁴

In 1996, finding that local governments had “subjected taxpayers to excessive tax, assessment, fee and charge increases” that frustrated the purposes of Proposition 13’s voter-approval requirements, California voters passed Proposition 218.⁵ Proposition 218 added new constitutional articles XIII C and XIII D. Article XIII C requires that all taxes imposed by local governments be designated as “general” or “special” taxes.⁶ It defines

¹ See, e.g., 94 Ops.Cal.Atty.Gen. 75 (2011).

² *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 (*Amador Valley*).

³ *Ibid.*

⁴ *Id.* at pp. 220, 231; Cal. Const., art XIII A, §§ 1-4.

⁵ Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 2, Findings and Declarations, p. 108, available at http://repository.uchastings.edu/ca_ballot_props/1138/.

⁶ Cal. Const., art. XIII C, § 2, subd. (a).

a general tax as “any tax imposed for general governmental purposes” and a special tax as “any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.”⁷ Article XIII C requires *all* local tax proposals to be submitted to the electorate, but general taxes must be approved by a majority vote, and special taxes must be approved by a two-thirds vote.⁸ Article XIII D places additional restrictions on the imposition of property taxes and assessments.⁹

Litigation ensued over whether certain governmental charges were taxes subject to legislative or voter approval, or fees exempt from such approval. For example, in *Sinclair Paint Company v. State Board of Equalization*, a paint manufacturer challenged the Childhood Prevention of Lead Poisoning Act of 1991, which allowed the state to collect funds from entities that contributed to environmental lead contamination.¹⁰ The California Supreme Court held that these funds were regulatory fees, not taxes requiring the approval of two-thirds of the Legislature. Recognizing that “the distinction between taxes and fees is frequently ‘blurred,’”¹¹ the Court reasoned that the charges were fees because they required “manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a ‘mitigating effects’ measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.”¹²

The voters acted again in 2010, asserting that taxes had “continued to escalate,” and that state and local governments were “disguis[ing] new taxes as ‘fees’ in order to extract even more revenue from California taxpayers without having to abide by [] constitutional requirements.”¹³ Proposition 26 amended the state Constitution to add a new definition of “tax.” It amended article XIII A to define a state “tax” as “any levy, charge, or exaction of any kind imposed by the State,” save for five enumerated exceptions.¹⁴ It similarly amended article XIII C to define a local “tax” as “any levy,

⁷ Cal. Const., art. XIII C, § 1, subds. (a), (d).

⁸ Cal. Const., art. XIII C, § 2, subds. (b), (d).

⁹ *Silicon Valley Taxpayers’ Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 443.

¹⁰ *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866, 869-870.

¹¹ *Id.* at p. 874.

¹² *Id.* at p. 877.

¹³ Ballot Pamp., Gen. Elec. (Nov. 2, 2010), text of Prop. 26, p. 114.

¹⁴ Cal. Const., art. XIII A, § 3, subd. (b).

charge, or exaction of any kind imposed by a local government,” save for seven enumerated exceptions.¹⁵

It is this latter provision that we examine here, to determine whether a public access fee, authorized under federal law, assessed under California’s Digital Infrastructure and Video Competition Act, and paid by a cable franchise holder to the county in which the holder is operating, falls within its ambit. We thus turn to the origin of the public access fee in question.

Public-access programming fees

Cable companies operate under franchises that involve federal, state, and local governments. In the late 1960’s and early 1970’s, local governments began regulating cable companies through franchises to exercise control over access to public rights-of-way and easements.¹⁶ “A franchise, . . . , is an authorization, akin to a license, by a

¹⁵ Cal. Const., art. XIII C, § 1, subd. (e). The exceptions enumerated in subdivision (e) are:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development; and

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

¹⁶ *Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C.* (1996) 518 U.S. 727, 788 (*Denver Area Consortium*) (conc. & dis. opn. of Kennedy, J.).

franchise authority permitting the construction or operation of a cable system.”¹⁷ A franchise agreement sets out the cable operator’s rights and obligations, and “[f]rom the early 1970’s onward, franchise authorities began requiring operators to set aside [public] access channels as a condition of the franchise.”¹⁸

Despite the importance of local government involvement, the provision of cable television is governed first by federal law. In 1968, the Supreme Court confirmed the authority of the Federal Communications Commission (FCC) to regulate cable television under the Communications Act of 1934.¹⁹ The FCC has been given broad authority to act “as the ‘single Government agency’ with ‘unified jurisdiction’ and ‘regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio.’”²⁰ Local jurisdictions played a significant role in the early days of cable regulation by awarding franchises to selected cable operators, resulting in what the FCC has called “a system of ‘deliberately structured dualism.’”²¹

Congress enacted the Cable Communications Policy Act of 1984 in an effort to clarify the roles of various government actors in cable regulation.²² This act “sought to balance two conflicting goals: ‘preserv[ing] the critical role of municipal governments in the franchise process,’ . . . , while affirming the FCC’s ‘exclusive jurisdiction over cable service, and overall facilities which relate to such service’”²³ As to public access programming in particular, federal law allows a franchising authority to require a cable operator to provide channel capacity for public access programming,²⁴ and the operator is prohibited from exercising editorial control over such programming.²⁵ The franchising authority is granted the power to enforce public access requirements.²⁶ Moreover, the

¹⁷ *Ibid.*

¹⁸ *Ibid.*; see also *id.* at p. 760 (plur. opn. of Breyer, J.) (noting that “cable operators have traditionally agreed to reserve channel capacity for public, governmental, and educational channels as part of the consideration they give municipalities that award them cable franchises”).

¹⁹ *United States v. Southwestern Cable Co.* (1968) 392 U.S. 157, 178.

²⁰ *Id.* at p. 168, internal footnotes omitted.

²¹ *Alliance for Community Media v. F.C.C.* (6th Cir. 2008) 529 F.3d 763, 767.

²² *Id.* at pp. 767-768.

²³ *City of New York v. F.C.C.* (D.C. Cir. 1987) 814 F.2d 720, 723, internal citations omitted.

²⁴ 47 U.S.C. § 531(b); *Denver Area Consortium, supra*, 518 U.S. at p. 790.

²⁵ 47 U.S.C. § 531(e).

²⁶ 47 U.S.C. § 531(c).

franchising authority may require, as part of the franchising process, that the cable operator assure that it will provide adequate public access “channel capacity, facilities, or financial support.”²⁷

Against this federal backdrop, California has its own laws governing the cable franchising process. Before 2007, cities and counties in California held the authority to award cable franchises,²⁸ resulting in varying franchise requirements and barriers to cable operators entering local markets.²⁹ Local governments typically negotiated the terms of each franchise, including the required financial support for public access programming, with the prospective cable operator.³⁰ To provide cable consumers with more choice, lower prices, and speedier deployment of new technologies,³¹ the Legislature passed the Digital Infrastructure and Video Competition Act of 2006 (Act),³² which transferred the franchising authority from local entities to the state.³³ But although the state now controls the awarding of cable franchises, the local entities in which cable services are provided retain a significant role in the process.

Most relevant here, the Act requires cable operators to designate a portion of their network for public access channels;³⁴ indeed, it requires franchise applicants to provide a sworn affidavit as part of the franchise application process affirming that they will “provide [public access] channels and the [public access fee] as required by Section 5870.”³⁵ In turn, the Act provides that “[a] local entity may, by ordinance, establish a fee to support PEG [public, educational, and governmental access] channel facilities consistent with federal law” and that “the fee shall not exceed 1 percent of the holder’s gross revenues.”³⁶ The franchise holder may then recover the amount of this fee from its

²⁷ 47 U.S.C. § 541(a)(4)(B), emphasis added.

²⁸ Gov. Code, § 53066.

²⁹ Klatt, *Chapter 700: Statewide Cable Franchising Ends the Patchwork of the Past* (2007) 38 McGeorge L. Rev. 309, 312.

³⁰ See, e.g., Assem. Floor Analysis of Assem. Bill No. 2937 (2005-2006 Reg. Sess.) Sep. 5, 2006, pp. 8-9.

³¹ Pub. Util. Code, § 5810.

³² Stats. 2006, ch. 700, §§ 1-4 (Assem. Bill No. 2937); see Pub. Util. Code, §§ 5800-5970.

³³ Pub. Util. Code, § 5840, subd. (a).

³⁴ Pub. Util. Code, § 5870, subd. (a).

³⁵ Pub. Util. Code, § 5840, subd. (e)(1)(B)(iv).

³⁶ Pub. Util. Code, § 5870, subd. (n).

subscribers “as a separate line item on the regular bill of each subscriber.”³⁷ With regard to this fee, an Assembly floor analysis of the bill in which the Act was passed explained that “[a]ll video service providers will be required to *continue* to provide monetary support for [public access programming operations] of up to 1% of gross revenue,” as they had done under the prior arrangement of negotiating local franchises with local government authorities.³⁸

The public access fee is not a local tax

If a local governmental entity opts to establish the public access fee described in the Act for the cable franchisee operating in its jurisdiction, does that fee constitute a local “tax” as defined in article XIII C that would require voter approval? For the reasons that follow, we conclude that it does not.

In examining this question, we apply the rules of constitutional interpretation, which “are similar to those governing statutory construction. In interpreting a constitution’s provision, our paramount task is to ascertain the intent of those who enacted it. To determine that intent, we look first to the language of the constitutional text, giving the words their ordinary meaning. If the language is clear, there is no need for construction.”³⁹ The issue here turns on whether the public access fee is, within the meaning of article XIII C, “a levy, charge, or exaction . . . imposed by a local government.”

Examining these terms, we see that to “impose” means to “establish or apply by authority; to establish or bring about as if by force,”⁴⁰ and thus the phrase “imposed by a local government” connotes that the local government is using its *own* authority or force to assess and require payment. But recall that the Digital Infrastructure and Video

³⁷ Pub. Util. Code, § 5870, subd. (o).

³⁸ Assem. Floor Analysis of Assem. Bill No. 2937 (2005-2006 Reg. Sess.) Sep. 5, 2006, p. 9, emphasis added. Indeed, the Act required at its inception that “[a]ll [preexisting] obligations to provide and support PEG [public, educational, and governmental access] channel facilities . . . shall continue until the local franchise expires until the term of the franchise would have expired if it had not been terminated pursuant [another provision of the Act allowing operators to seek a state franchise], or until January 1, 2009, whichever is later.” (Pub. Util. Code, § 5870, subd. (k), referencing Pub. Util. Code, § 5840, subd. (o).)

³⁹ *Thompson v. Dept. of Corrections* (2001) 25 Cal.4th 117, 122, internal citations and quotation marks omitted.

⁴⁰ Merriam-Webster’s Collegiate Dictionary (10th ed. 1998) p. 583, col. 2.

Competition Act requires franchise applicants to agree—as a condition of being granted a cable franchise—to provide both public access channels and the funding to support them.⁴¹ When a local entity passes an ordinance to collect the public access fee,⁴² it is not imposing a charge on an individual or entity that would not otherwise be obligated to pay it. Rather, the local entity is making explicit the cable franchisee’s preexisting obligation to deliver and provide funding for public access programming, an obligation it freely assumed as part of the franchise application process.

Thus, we do not find this public access fee to be a “levy, charge, or exaction . . . imposed by a local government” within the meaning of article XIII C. The compulsion to pay it does not emanate from, and is therefore not “imposed by,” the local governments that have historically received this fee in exchange for granting franchises to cable operators who seek to operate within their jurisdictions. Instead, because the Digital Infrastructure and Video Competition Act shifted franchising authority to the state but left operational responsibility with local jurisdictions, we view the enactment of a local public access fee as the implementation of the right to enforce a franchise obligation. Although this enforcement right may now nominally rest with the state government franchisor that conditioned the franchise grant on the applicant’s promise to provide public access funding, we see the Act’s authorization of a local access fee as effectively transferring this right⁴³ to the local public entity that is tasked with ensuring that the promised public access funds are received and put to proper use. And, no matter which governmental entity actually enforces and collects the public access fee, we do not believe that article XIII C was intended to enable a cable operator to avoid an obligation that it voluntarily agreed to pay as a condition of being awarded a franchise. A local ordinance to enforce the payment of such an obligation is simply not a local “tax”—even under article XIII C’s broad definition of that term.

As several courts have noted in examining claims under article XIII A, it is easy to fall into the trap of concluding that if a particular amount collected by a governmental entity fails to meet the definition of a permissible “fee,” then, by “reverse logic,” it must be a tax.⁴⁴ Although these cases predate Proposition 26’s expanded definition of tax, the

⁴¹ Pub. Util. Code, § 5840, subd. (e)(1)(B)(iv).

⁴² Pub. Util. Code, § 5870, subd. (n).

⁴³ Pub. Util. Code, § 5870, subd. (n).

⁴⁴ E.g., *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 194 (“it is an analytical error to conclude ‘by reverse logic’ that if a regulatory fee does not meet the reasonable costs requirements of [Government Code] section 50076 that ‘it must be a special tax.’ . . . In short, California Constitution, article XIII A does not apply to every regulatory fee simply because, as applied to one or another of the payor class, the fee is

admonition is still relevant: it is easy, but wrong, to conclude that *any* amount collected by a local government that does not fall within one of the exceptions enumerated in article XIII C⁴⁵ is necessarily a tax. As we have discussed, because the cable franchise holder committed to provide public access facilities funding in exchange for a cable franchise as part of the state's franchising process,⁴⁶ we conclude that the public access fee is not a "levy, charge, or exaction . . . imposed by a local government"—that is, a *tax*—within the meaning of article XIII C.

disproportionate to the service rendered"); *Alamo Rent-A-Car, Inc. v. Bd. of Supervisors* (1990) 221 Cal.App.3d 198, 205-206 ("We note the court reached its decision by 'reverse logic,' i.e., if the fee did not meet the requirements of [Government Code] section 50076, then it must be a special tax. That is not the proper approach in this case. If the fee is not the type of exaction which article XIII A was designed to reach, then resort to [Government Code] sections 50075-50077, the enabling legislation for the article, is unnecessary").

⁴⁵ Cal. Const. art. XIII C, § 1, subd. (e). We have considered whether any of the seven enumerated exceptions to the constitutional definition of local "tax" might apply to the public access fee at issue here, but have concluded that none do.

The first and second exceptions—for a specific benefit conferred or privilege granted directly to the payor, or for a specific government service or product provided directly to the payor (Cal. Const. art. XIII C, § 1, subds. (e)(1) & (e)(2))—would not apply since the fee at issue is tied to the franchise holder's total gross revenues, rather than being capped so that it "does not exceed the reasonable costs to the local government" of conferring the benefit, granting the privilege, or providing the service or product.

The third exception—for costs paid to a local government for issuing a license (Cal. Const. art. XIII C, § 1, subd. (e)(3))—would not apply since it is the state, not the local government, that issues the franchise.

The fourth exception—for charges "imposed for entrance to or use of local government property" (Cal. Const. art. XIII C, § 1, subd. (e)(4))—would not apply since the Public Utilities Code already imposes a franchise fee of up to 5 percent of the cable providers' gross revenues that is "payable as rent or a toll for the use of the public rights-of-way by the holders of the state franchise . . ." (Pub. Util. Code, § 5840, subd. (q)(1)). The public access fee is an additional charge aimed at supporting public programming, rather than compensating the public entity for the use of public property.

The fifth, sixth, and seventh exceptions—for fines/penalties, property development fees, and property-related assessments (Cal. Const. art. XIII C, § 1, subds. (e)(5), (e)(6) & (e)(7))—are not implicated here.

⁴⁶ Pub. Util. Code, § 5840, subd. (e)(1)(B)(iv) (cable operator's application for franchise must include affidavit that operator will provide public access channels "and the required funding as required by Section 5870").

Federal preemption concerns

Although we need not reach the issue, we note that a contrary interpretation of Article XIII C would likely raise federal preemption concerns.⁴⁷ Congress may preempt state law by expressly stating its intent to do so,⁴⁸ and it has clearly done so with respect to the franchising of cable broadcasting: "any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded."⁴⁹ If a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," the state law must yield.⁵⁰

Among the enumerated aims and objectives of the federal laws governing cable communications are to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public,"⁵¹ and to "establish franchise procedures and standards . . . which assure that the cable systems are responsive to the needs and interests of the local community."⁵² The federal

⁴⁷ The supremacy clause of the United States Constitution (U.S. Const., art. VI, cl. 2) "invalidates state laws that 'interfere with, or are contrary to,' federal law." (*Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.* (1985) 471 U.S. 707, 712). As we have observed, "The supremacy clause requires that every state provision, *including those enacted by ballot and accorded state constitutional stature*, conform to federal constitutional standards. [Citation.] Consequently, both the constitution and laws of a state, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void." (68 Ops.Cal.Atty.Gen. 209, 220 (1985), *italics added*.)

⁴⁸ *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Com.* (1983) 461 U.S. 190, 203.

⁴⁹ 47 U.S.C. § 556(c); see *Medtronic, Inc. v. Lohr* (1996) 518 U.S. 470, 485 ("[t]he purpose of Congress is the ultimate touchstone" in every pre-emption case"). Even without an express statement, federal law preempts state law where the two conflict. (*Jones v. Rath Packing Co.* (1977) 430 U.S. 519, 525-526.)

⁵⁰ *Hines v. Davidowitz* (1941) 312 U.S. 52, 67; see also *Freightliner Corp. v. Myrick* (1995) 514 U.S. 280, 287-289 (state law may be impliedly preempted even where federal statute contains express preemption clause).

⁵¹ 47 U.S.C. § 521(4).

⁵² 47 U.S.C. § 521(2). The congressional findings for the Cable Television Consumer Protection and Competition Act of 1992 indicate that "[t]here is a substantial governmental interest and First Amendment interest in promoting a diversity of views provided through multiple technology media." (Historical and Statutory Notes, Thomson

statutes facilitate these goals by allowing franchising authorities to require cable operators to provide channel capacity, facilities, and financial support for public access programming,⁵³ and granting the franchising authority enforcement power over public access requirements.⁵⁴

California's Digital Infrastructure and Video Competition Act advances the federal scheme by requiring public access channels to be available to all subscribers⁵⁵ and to be carried on the basic service tier.⁵⁶ The Act further requires a commitment from prospective franchisees to financially support public access programming facilities as part of the application for a franchise.⁵⁷ Interpreting Proposition 26 as requiring voter approval before a local government may impose this fee, and as depriving local governments of the power to enforce the fee where voters failed to approve it, could be viewed as frustrating Congress's objectives for public access programming.⁵⁸

Several courts have reached similar conclusions when evaluating state and local laws imposing voting requirements on the granting of a cable franchise. For instance, the Oklahoma Constitution dictates that, "No municipal corporation shall ever grant, extend, or renew a franchise, without the approval of a majority of the qualified electors residing within its corporate limits."⁵⁹ State and federal courts in Oklahoma have found this provision preempted by the federal Communications Act.⁶⁰ Likewise, the federal district

Reuter's 47 U.S.C.A. (2014 ed.) foll. § 521, Congressional Findings and Policy: Cable Television Consumer Protection and Competition Act of 1992, ¶ (a)(6); see also *Time Warner Cable of New York City v. City of New York* (S.D.N.Y. 1996) 943 F.Supp. 1357, 1389 [the purposes of the Cable Communications Policy Act "include a desire to respond to local needs, create space for voices that would not otherwise be heard, air programs needed by a community that may not otherwise be commercially viable, and, for governmental channels, show local government at work"].)

⁵³ 47 U.S.C. §§ 531(b), 541(a)(4).

⁵⁴ 47 U.S.C. § 531(c).

⁵⁵ Pub. Util. Code, § 5870, subd. (g)(3).

⁵⁶ Pub. Util. Code, § 5870, subd. (b).

⁵⁷ Pub. Util. Code, § 5840, subd. (e)(1)(B)(iv).

⁵⁸ See *Hines v. Davidowitz*, *supra*, 312 U.S. at p. 67 (state law is preempted where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

⁵⁹ Okla. Const., art. XVIII, § 5(a).

⁶⁰ *Get Real II, L.L.C. v. Paige* (Okla.Civ.App. 2009) 217 P.3d 638, 643; *Cox Communications Central II, Inc. v. Broken Arrow* (N.D. Okla. Mar. 11, 2003, No. 02-

court in Colorado has held that federal law preempted a city charter requiring voter approval of any franchise.⁶¹ Consistent with this precedent, we believe that a court could find that allowing voters to decide whether cable franchise holders must fulfill their obligations to support and fund public access programming conflicts with the federal Communications Act's provisions for charging and collecting public access fees,⁶² and frustrates Congress's clearly stated objectives for cable broadcasting to serve local communities and provide a diversity of programming. Our construction of Proposition 26 and the Digital Infrastructure and Video Competition Act avoids this clash altogether.⁶³

Conclusion

We conclude that Proposition 26 does not require voter approval before a county board of supervisors may enact an ordinance that would require a cable television franchise holder providing service in the county to pay a "public, educational, and governmental access fee," equal to one percent of the "holder's gross revenues," to the county as authorized under California's Digital Infrastructure and Video Competition Act.

CV-741-P0J) 2003 U.S. Dist. Lexis 28254.

⁶¹ *Qwest Broadband Services, Inc. v. City of Boulder* (D.Colo. 2001) 151 F.Supp.2d 1236, 1242.

⁶² 47 U.S.C. §§ 531(c), 541(a)(4).

⁶³ See *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 477 (avoiding "constitutional infirmities" is an established rule of statutory construction).

Channel Managers Meeting - January 28, 2016

Prepared by Chris Miller

Meeting held from 10 to 11am at PCAC, Suite 450

Alexander Boekelheide, PCC Representative, present

William Boyer, City Manager (KPAS) Representative, present (via phone)

Beth Leyden, PUSD Representative, present

Chris Miller, PCAC Interim Executive Director (Arroyo Channel), present

I. Pasadena Media New Media Studio Capital Request

Motion to recommend to the full board, with the condition of reviewing the agreement and ascertaining ongoing maintenance costs, by Boyer; second by Boekelheide. An updated quote from Brainstorm is attached. An ongoing Maintenance agreement is 10% of the current list price of the software. In other words, after the included first 12 months, this agreement would cost \$4850 annually.

II. PEG Fund Distribution Process Review & Development

Miller reviewed the current PEG account balance and requests since 2013. Leyden and Boyer presented the history of how PEG funds have been requested since they've been involved and noted that it was the only time Channel Managers convened meetings. Boyer also gave background on how PEG funds are delivered from the cable companies to the City to PCAC. The Channel Managers agreed to set another meeting to develop a PEG funding request process and/or workplan.



BRAINSTORM



Brainstorm US Inc.
The Bush Tower
130 West 42nd St. Ste 705
New York, NY 10036

DATE
Jan 28, 2016

PREPARED FOR
Chris Miller
Pasadena Media - KPAS
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Brad Rumler
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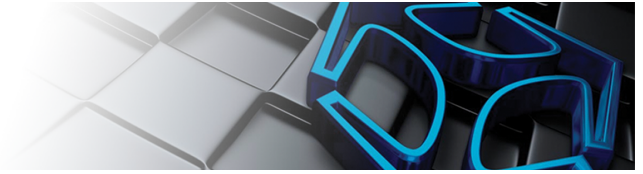
VALID UNTIL
Feb 26, 2016

QUOTATION

QUOTE NUMBER
KPAS-012816-BR-1

Promotional fully featured Infinity Set 3DG with immersive graphics turnkey system for KPAS-Pasadena Media as a reference site and case study for other community access stations in the US. Joint promotion at NAB and the ACM Boston 2016 show. All Brainstorm software is provided free of charge. KPAS only pays for hardware, installation/training including travel/hotel and 50% discount on optional custom virtual set design if required.

ITEM	QUANTITY	RATE	DISCOUNT	TOTAL
Infinity Set 3DG Top of the line fully featured version of Infinity Set. 4 SD/HD-SDI video inputs (hardware dependant). Integration of unlimited number and resolution of AVI, MOV files (hardware dependant). Import of multiple image formats: JPG, PSD, TGA, PNG, TIFF, RGB. Import of multiple 3D formats including DAE, OBJ, 3DS, FBX. 6 virtual axis camera displacements -HPR and XYZ. 256 configurable camera positions per camera. Creation of 3D scenes from library of ceilings, floors, walls, textures and objects. Extended library of pre-built virtual sets (configurable colour, size, texture, and video & still image inserts). Internal Chroma keyer per input with color correction. External Chroma keyer support (Separate Fill and Key). Enhanced trackless control with intelligent billboard. Shader based materials. Internal DDR. Shotbox to control objects on screen, displace, change color, etc.	1	\$44,850.00	100%	\$0.00
Infinity Set Certified Workstation High powered optimized real-time workstation fully tested and certified by Brainstorm for Infinity Set 3DG - HP z640/AJA Corvid 88 with up to 7 HDSDI input (4 concurrent) and HDSDI output/NVIDIA Quadro K6000 12GB.	1	\$13,650.00	0%	\$13,650.00
Infinity Set Onsite Installation, Training & Support 5 days on-site support for Infinity Set turnkey pack to provide set up, installation support and detailed training by Brainstorm Engineer. (Excluding travel, hotel and associated costs which will be billed separately.)	1	\$5,250.00	0%	\$5,250.00
Infinity Set- Photoshop Plugin PSD plug-in - allows exporting of PSD CC y CS6 files to Brainstorm Infinity Set.	1	\$2,500.00	100%	\$0.00



ITEM	QUANTITY	RATE	DISCOUNT	TOTAL
Infinity Set- After Effects Plugin After Effects plugin exporting After Effects projects to Infinity Set as graphics.	1	\$2,500.00	100%	\$0.00
Infinity Set- 1 Custom Virtual Set (Optional) Our Virtual Set Design Department will custom design the virtual environment you require from initial concept to final product. (Price dependant on complexity. 50% discount provided off total price). Infinity Set also comes with 20+ customizable virtual studios.	1	\$5,000.00	50%	\$2,500.00
HP 23-inch Touchscreen LED Monitor (Optional) Touchscreen virtual set 3D camera production controller designed to operate all the software video mixer capabilities with touch rather than mouse/ keyboard.	1	\$390.00	0%	\$390.00
			TOTAL	\$21,790.00



BRAINSTORM



PAYMENT DETAILS (WITHIN THE U.S.)

Santander Bank
Account Name: Brainstorm US, Inc.
Account Number: 9993986062
ABA: 231372691

TERMS AND CONDITIONS

Prices are in US Dollars and exclude any applicable taxes
Payment terms are net with order unless otherwise noted
In the event of quote acceptance, it should be confirmed by purchase order
Unless stated above, this quote is valid for 30 days
Delivery Time: 4-6 weeks (unless otherwise arranged).

Software Support

During the 12 month period from date of installation - or 30 days from date of invoice, whichever is the shortest timeframe - email support, forum access, FTP access - to the Brainstorm repository for installers, updates, manuals, etc., and basic telephone support, will be included as standard.

Maintenance Support

Maintenance of the software supplied, including all upgrades, features, bug fixes and other non-costed improvements within the version, is also included as standard during the 12 month period. The continuation of Support and Maintenance is a contractual obligation undertaken by the customer and must be renewed after one year at the cost of 10% of the then current list price.

Hardware

The hardware is supplied with the standard manufacturer's warranty.

Additional Services

We also offer a comprehensive suite of professional services ranging from template and graphics creation and consultation, to automation, newsroom and other interfaces which allow 3rd party control.

Loss of Product license

In the event that a Product licence supplied by Brainstorm is irredeemably lost by the customer, its agents, associates, clients or end users, then the customer will be obligated to purchase a replacement Product licence at 100% of the then list price.

Provision of Temporary and Permanent Licenses

Temporary licenses will be supplied against all orders unless and until 100% of payment has been received by Brainstorm US Inc.

Third Party Integration

In the event that integration is required with third party hardware and/or software not supplied or contracted under this quotation, Brainstorm cannot assume responsibility for such integration.

New Media Studio Project Proposal

Prepared by Chris Miller - December 24, 2015

OVERVIEW

Pasadena Media has an underutilized space that was originally intended as a second studio. During the first year of operation at this location, the room housed SightDeck equipment through an agreement with iMatte, Inc. Over the past year, it has been utilized a few times a week as a training and meeting room. Other uses such as for Pasadena Media training video shoots, KPAS productions or as a staging area for field shoots are infrequent.

During a tour of our facility at the ACM Conference in August, a discussion with the broadcast graphics and virtual sets company Brainstorm led them to propose the installation of a system called Infinity Set. While Pasadena Media would be responsible for hardware, installation and training costs, Brainstorm would provide their software at no charge in order to gain a test site within the PEG access community. This reduces the cost for such a system from approximately \$70,000 to approximately \$20,000.

GOALS

1. Create a studio that requires very little set up time. Ideal uses would include spur of the moment KPAS, KLRN and PCC-TV productions such as emergency press conferences, as well as for community members with time constraints for Arroyo Channel programming.
2. Create a studio that requires no crew members. This would benefit community members who have had trouble recruiting volunteers, who would prefer to work alone and/or do not desire to spend a lot of time on pre-production.
3. Continue to be a leader in the PEG access community by providing a versatile and unique virtual set solution.

SPECIFICATIONS

The proposed equipment list attached contains all items needed that Pasadena Media doesn't already own in order to meet the stated goals. Brainstorm's Infinity Set would provide a state-of-the-art virtual set and graphics package. This technology allows infinite virtual cameras in a trackless virtual environment with integrated 3D graphics using a single camera. The three robotic cameras and associated gear allow for traditional multi-person interviews with on-set and off-set controls. A flat lighting scheme for the room would eliminate the need for time-consuming light plotting.

PEG FUNDING REQUEST FOR NEW MEDIA STUDIO

Area Of Need	Item Description	Item Make	Item Model	Item Cost	Cost After Discoun	Qty	Subtotal
Studio Cameras	Robotic PTZ Camera	Sony	EVI-H100S	\$2,999.00	\$2,499.00	3	\$7,497.00
	Camera Wall Mount	Vaddio	535-2000-236	\$70.00	\$69.00	3	\$207.00
	Camera Controller	Sony	RM-BR300	\$1,499.00	\$1,399.00	1	\$1,399.00
							\$9,103.00
Control Room	Virtual Set Production Switcher	Brainstorm	<u>Infinity Set 3DG</u>	\$44,850.00	\$0.00	1	\$0.00
	Infinity Set- Photoshop Plugin	Brainstorm		\$2,500.00	\$0.00	1	\$0.00
	Infinity Set- After Effects Plugin	Brainstorm		\$2,500.00	\$0.00	1	\$0.00
	Infinity Set- Custom Virtual Set	Brainstorm		\$5,000.00	\$2,500.00	1	\$2,500.00
	Infinity Set Onsite Installation, Training & Support	Brainstorm		\$5,250.00	\$5,250.00	1	\$5,250.00
	Infinity Set Certified Workstation	HP/AJA/Brainstorm	z640/Corvid 88/custom	\$13,650.00	\$13,650.00	1	\$13,650.00
	HP 23-inch Touchscreen LED Monitor	HP	S230tm	\$390.00	\$390.00	1	\$390.00
	Monarch HDX H.264 Recorder	Matrox	MHDX/I	\$1,995.00	\$1,995.00	1	\$1,995.00
							\$23,785.00
On Set	C.K. Green Poly Muslin Seamless w/Grommets 9'Hx20'W	S & K	custom	\$453.50	\$453.50	1	\$453.50
	Android Tablet Camera Controller / Cabling	Videobotics	CamRobot	\$849.00	\$849.00	1	\$849.00
							\$1,302.50
Studio Lighting	Five Fluorescent Light Kit	Flolight	KIT-FL-220AWD3GR	\$2,739.75	\$2,499.00	1	\$2,499.00
							\$2,499.00
					SUBTOTAL		\$36,689.50
					tax/freight (approx)		\$3,668.95
					TOTAL		\$40,358.45