

# PUBLIC CABLE TELEVISION AUTHORITY

A Joint Powers Agency  
10350 Fern Ave. Stanton, CA 90680

## AGENDA

**DATE:** July 19, 2023  
**TIME:** 9:00 A.M.  
**PLACE:** Stanton City Hall, City Council Chambers  
7800 Katella Ave. Stanton, CA 90580

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IN ACCORDANCE WITH THE REQUIREMENTS OF CALIFORNIA GOVERNMENT CODE SECTION 54954.2, THIS AGENDA IS POSTED NOT LESS THAN 72 HOURS PRIOR TO THE MEETING DATE AND TIME ABOVE. ALL WRITTEN MATERIALS RELATING TO EACH AGENDA ITEM ARE AVAILABLE FOR PUBLIC INSPECTION IN THE OFFICE OF THE CITY CLERK OF EACH MEMBER CITY OF PCTA.

IN THE EVENT ANY MATTER NOT LISTED ON THIS AGENDA IS PROPOSED TO BE SUBMITTED TO THE BOARD FOR DISCUSSION AND/OR ACTION, IT WILL BE DONE IN COMPLIANCE WITH SECTION 54954.2 OR AS SET FORTH ON A SUPPLEMENTAL AGENDA POSTED NOT LESS THAN 24 HRS PRIOR TO THE MEETING.

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1. Call to Order
2. Pledge of Allegiance & Roll Call
3. Public Comments: Persons wishing to address the Board on PCTA matters may as determined by the Chair; comments are limited to three minutes or deferred until the specific agenda item.
4. Consent Calendar: All matters listed under the Consent Calendar are considered to be routine and will be enacted on simultaneously with one motion without discussion, unless separate action and/or discussion is requested by a board member, staff, or a member of the public.
  - A. Minute Approval of June 21, 2023 Regular Meeting: See backup to Item 4A.
  - B. Receive/File Register: See backup to Item 4C.
  - C. Receive/File Treasurer's/Administrative Expenditure Reports: See backup to Item 4D.

*RECOMMENDED ACTION: PCTA Board approve all items on the Consent Calendar.*

5. Reports:
  - A. Report of Board.
  - B. Report of Treasurer
  - C. Report of Attorney
  - D. Report of Administration
6. Old Business
  - A. PCTA Member Cities Granicus Contract Renewals – See Backup to Item 6A

*RECOMMENDED ACTION: Staff recommends Board to review and provide direction to staff.*

B. PCTA Presentation and Update – See Backup to Item 6B

*RECOMMENDED ACTION: Staff recommends Board to review and provide direction to staff.*

7. ADJOURNMENT TO **August 16, 2023**, at 9:00 A.M. at Stanton City Council Chambers, 7800 Katella Ave. Stanton, CA 90680



MINUTES

Regular Meeting of June 21, 2023

10350 Fern Avenue
Stanton, CA 92680

1. Call to Order: Chair David Shawver called the meeting to order at 9:03 a.m.

2. Roll Call:

Director Kimberly Ho Westminster Present Vice-Chair Kim Constantino Fountain Valley Present
Director Carol Warren Stanton Present Chair Dave Shawver Stanton Present
Director Glenn Grandis Fountain Valley Present Director NamQuan Nguyen Westminster Present

Staff Present:

Louis Rocha PCTA Hannah Shin-Heydorn Stanton
Meghan Wishner Fountain Valley Vanessa Johnson Westminster
Maggie Lee Fountain Valley Christine Cordon Westminster

3. Public Comments: None

4. Consent Calendar:

Supervising Manager asked that the provided Minutes of the May 17, 2023, Meeting be amended to include Director Nguyen as Present.

Director Warren motioned to approve Consent Calendar of May 17, 2023 as amended; Seconded by Vice Chair Constantine.

Motion passes 5-0, Director Ho absent

5. Reports:

B: Report of Finance Director: Director Grandis presented an update on Westminster's PEG Fee expenditure, taking the city into a negative amount on the monthly balance. Director Grandis also asked that the Franchise Fee payments be made to each member city despite the distribution details having not been provided by Spectrum for the quarter. Due to this incomplete information, Director Grandis asked that the bookkeepers estimate a 95% distribution with the final total amount provided once the Franchise Fee details were provided by Spectrum.

C: Report of Administration: Supervising Manager Rocha updated the Board on member cities' programming update. Manager Rocha instructed PCTA's Master Control Operator to reach out to city liaisons in an effort to update and keep current the video bulletin board slide as well as remove dated programming from playback. Manager Rocha provided information about the SCAN NATOA Conference due to be held on June 29th in Long Beach, however the conference itself was cancelled on June 15th. The STAR Awards Ceremony will now be streamed on the 29th at noon. PCTA is nominated as a finalist in the Instructional category for the Cablecast Promotional video. Also held in Long Beach, the annual NATOA Conference is scheduled for October, and Manager

Rocha provided a list of conference sessions that may interest the Board and their City staff. The status of Westminster's City Council Chamber update was mentioned as vendors had toured the facility and PCTA was waiting on their recommendations/assessments, which would then be provided to Westminster City staff for their review before the next step in the process. Finally, the new non-linear editing system had arrived and was in the process of installation so that Manager Rocha could begin editing PCTA programming going forward.

**6. Old Business:**

**6A. PCTA Presentation and Update**

**Moved by Director Grandis, seconded by Vice Chair Constantine**

**Moved to receive and file, approved 6-0**

**New Business:**

**7A. PCTA Member Cities Granicus Contract Renewals**

**Moved by Chair Shawver, seconded by Director Grandis**

**Approved, 6-0.**

The meeting was adjourned to 9:00 A.M. Wednesday, **July 19, 2023**, at City of Stanton City Council Chambers. 7800 Katella Ave., Stanton CA 90680

Respectfully submitted,

Louis A. Rocha  
Supervising Manager

# PUBLIC CABLE TELEVISION AUTHORITY

## Memorandum

To: PCTA Board of Directors  
From: Louis Rocha, Supervising Manager  
Date: July 19, 2023  
Re: Report of Recent PCTA Activities

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### **SCAN-NATOA STAR Awards**

PCTA took the First Place STAR Award in the Instructional Category for their Cablecast App promotional video. The Cablecast App was created as a brief tutorial on how to watch PCTA programming across multiple streaming apps. The video was produced by Danny Hitt and edited/animated by Joe Rodriguez. This was PCTA's first STAR Awards win since 2016

### **PCTA/OCFA Partnership**

At the urging of the Board, PCTA Staff has reached a working partnership with the Orange County Fire Authority for the OCFA to provide PCTA Member cities with content to playback on city channels and streaming platforms. City staff has been provided with a listing of currently available public service announcements for scheduling at the city's request.

### **PCTA Available Programming**

At the June 21, 2023 Board Meeting, during the discussion over channel programming, it was mentioned that there was a lack of content currently available on city channels. Director Warren mentioned that PCTA had several hours available for use thanks to the agency's membership with SCAN NATOA and their regular Swap-A-Rama event. The last Swap-A-Rama was held in Spring of 2019. Attached is a listing of current program titles (and number of episodes) immediately available to all member cities. This list has previously been provided to city staff for their review.

### **Westminster City Council Chamber Update**

The vendors have concluded their surveys and assessments of the council chamber upgrades and those proposals have been forwarded to city staff for review.

## Available Programming via Swaparama

2019

An Evening at the Ford	7 Episodes
Aquarium of the Pacific	22 Episodes
CCPA Concerts	15 Episodes
Community Cooking	47 Episodes
Diego Sepulveda Adobe	Single Program
Feeling Fit Flub	5 Episodes
GardenWise	19 Episodes
In LA	2 Episodes
K9 Corner	11 Episodes
Keep Kids Safe	3 Episodes
Local Gourmet	5 Episodes
Lyon Air Museum	Single Program
Mind-Body	24 Episodes
Monterey County – Laguna Seca	Single Program
Portraits	7 Episodes
South Bay Guide	20 Episodes
Storytime at the Library (LA County)	4 Episodes
Vintage Vehicle Show	2 Episodes
Wave (Arts and Culture Santa Monica)	9 Episodes

# Public Cable Television Authority

## Memorandum

**DATE:** July 19, 2023  
**TO:** Board of Directors  
**FROM:** Louis A. Rocha, Supervising Manager  
**RE:** Granicus Services Contract Renewal

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### **BACKGROUND**

At the June 19, 2023 PCTA Board of Directors Meeting, the Board approved renewing member cities annual service contracts for Granicus. Due to the time-sensitive nature of the renewal process, the Board approved the contracts but wished to bring back the item for review.

### **DISCUSSION**

At issue is the Board requesting clarification as to why PCTA was paying for Granicus services for member cities as the bulk of the services provided was for City Clerk's use with online streaming capability being secondary. Supervising Manager Rocha stated that the decision for PCTA to pay for these services was initially made by the Executive Director in Q1, 2010 with PCTA sharing the costs with each member city's City Clerk Department. At some point a few years later the General Manager of PCTA assumed taking over Granicus costs entirely and the agency continued to operate in this manner.

### **CLOSING**

Staff recommends Board review and provide direction to staff.

# Public Cable Television Authority

## Memorandum

**DATE:** July 19, 2023  
**TO:** Board of Directors  
**FROM:** Supervising Manager Louis Rocha  
**RE:** PCTA Presentation and Update

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### **BACKGROUND**

Chair Shawver asked to invite member cities City Managers to provide them with an update on the status of the PCTA

### **DISCUSSION**

A verbal summary of the current status and future of the PCTA will be provided.

### **CLOSING**

Staff recommends Board move to receive and file.



## Memorandum

**To:** The Board of Directors of Public Cable Television Authority  
Louis Rocha, Supervising Manager

**From:** Bennett Givens, Best Best & Krieger

**Date:** June 22, 2023

**Re:** Restrictions on the Use Public, Educational, and Governmental (PEG) Funds

The Public Cable Television Authority (PCTA) asked for a description and explanation of all applicable restrictions on its use of PEG funds. This memorandum focuses primarily on PEG channel funding and delivery requirements imposed by the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) under state law, and also briefly addresses relevant federal law and Federal Communications Commission orders.

### Discussion

#### I. Restrictions on PCTA's use of PEG Fees

##### *Federal Law Restrictions on Use of PEG Fees*

Federal law allows local franchising authorities to collect franchise fees and PEG fees from cable operators and imposes a cap on franchise fees collected from cable operators equivalent to five percent (5%) of the cable operator's gross revenues derived from the operation of the cable system to provide cable services.<sup>1</sup> The PEG fees that are paid by DIVCA franchise holders are established "to support PEG channel facilities consistent with federal law."<sup>2</sup> That is generally understood to include use of the PEG fee to pay for "capital costs" of PEG facilities.

Under federal law, any fee required by a franchise and paid to the City will be counted against the federal franchise fee cap of 5% of gross revenues unless the fee is for "capital costs" for "public, educational or governmental access facilities."<sup>3</sup> "Capital costs" which are required by the franchise to be incurred by the cable operator for PEG access facilities do not count against the 5% cap on franchise fees; PEG fees for capital costs may be collected *in addition* to the franchise fees.<sup>4</sup>

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<sup>1</sup> 47 U.S.C. §542(a)-(b).

<sup>2</sup> Pub. Util. Code 5870(n).

<sup>3</sup> Cable Act, Sec. 622(g)(2)(C), 47 USC §542(g)(2)(C).

<sup>4</sup> Id.

The term “capital costs” is not defined in the federal statute. Generally, a capital cost is an expenditure for actual *PEG facilities*.<sup>5</sup> According to the legislative history of the statute, this may include “vans, studios, cameras, or other equipment relating to the use of [PEG] channel capacity.”<sup>6</sup> PEG staff salaries and training, on the other hand, would not qualify as capital costs.

#### *State Law Restrictions on Use of PEG Fees (DIVCA)*

DIVCA imposes PEG requirements on “video service” providers which is a broader term that includes but is not limited to cable service operators.<sup>7</sup> DIVCA allows localities to require a fee “to support PEG channel facilities consistent with federal law” of up to one percent (1%) of gross revenues, or in some limited cases to establish a fee “to support PEG activities of up to three percent” (3%).<sup>8</sup> While DIVCA does not expressly limit PEG fee expenditures to capital costs, there is little California jurisprudence to inform interpretations of DIVCA’s PEG fee provisions.<sup>9</sup> The case of *City of Glendale v. Marcus Cable Associates, LLC*, 231 Cal. App. 4th 1359, 1371-72 (Cal. App. 2d. Dist. 2014) suggests that PEG fees must be applied exclusively to capital costs, or should be treated as franchise fees under federal law. It is prudent to limit expenditures to those PEG capital costs allowed by federal law to avoid potential claims by DIVCA franchise holders that PCTA is mispending its PEG fees.

#### *PEG Fee is Not a Tax*

State video franchise holders sometimes argue that a PEG fee is a tax subject to Proposition 26’s voter approval requirement and pay their PEG fees “in protest.” The California Attorney General has made clear that a local government’s adoption of a PEG fee consistent with DIVCA does not constitute a local “tax” as defined in Article XIII C of the California Constitution that would require voter approval.<sup>10</sup>

#### *Audit Rights and Limits on Look Back Period*

Local governments sometimes perform audits of the state video franchise holder books to confirm that accurate amounts of franchise and PEG fees are being paid. Under DIVCA, there is a statute of limitations for claims for fees owed to the City which states: “Any claims by a local entity that compensation is not in accordance with subdivision (a), and any claims for refunds or

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<sup>5</sup> Cable Act, Sec. 602(16), 47 USC §522(16); see *City of Glendale v. Marcus Cable Associates, LLC*, 231 Cal. App. 4th 1359, 1371-1373 (Cal. App. 2d Dist. 2014), citing H.R.Rep. No. 98–934, 2d Sess., p. 45 (1984); *Alliance for Community Media v. F.C.C.*, 529 F.3d 763, 783–785 (6th Cir.2008).

<sup>6</sup> H.R.Rep. No. 98–934, *supra*, at p. 45.

<sup>7</sup> Pub. Util. Code § 5840(q)(1).

<sup>8</sup> *Id.* § 5870(n).

<sup>9</sup> *City of Glendale v. Marcus Cable Associates, LLC*, 231 Cal. App. 4th 1359, 1371-72 (Cal. App. 2d. Dist. 2014) suggests that PEG fees must be applied exclusively to capital costs, or should be treated as franchise fees under federal law.

<sup>10</sup> See 99 Ops.Cal.Atty.Gen. 1, (2016). AG opinions are not binding but are considered persuasive authority for the courts. See also *Del Mar*, 2017 WL 3705833, at \*4 (“the fee here is not within the definition of tax”).

other corrections to the remittance of the holder of a state franchise, shall be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of the remittance, whichever is later.”<sup>11</sup> Although that provision is in the franchise fee section of DIVCA, it is generally agreed to also apply to PEG fee payments.

### **III. Limitations on PEG Transport Facilities and PCTA Payment Obligations.**

In 2019, the FCC adopted an Order<sup>12</sup> that concluded that the 5% statutory cap on franchise fees included not only cash payments but also the marginal cost<sup>13</sup> of certain in-kind contributions (non-cash) required by local franchise authorities from cable operators as a condition or requirement of a franchise agreement. That same 2019 Order also extended the FCC’s rulings to state (rather than just local) franchising authorities like the State of California under DIVCA, reasoning that the federal Cable Act makes no distinction between them. One example of an in-kind item that is commonly required in local franchise agreements that would now count towards franchise fees is free cable service to government buildings. However, in California, free cable service is not a franchise requirement under DIVCA so the 2019 Order did not modify state law.

The 2019 Order may also potentially impact DIVCA rights and obligations concerning who is responsible for the costs of equipment and fiber lines local governments use to deliver PEG programming from their programming origination location to the cable provider, known as “PEG transport facilities.”<sup>14</sup> The FCC has declared that the physical installation of PEG transport facilities does not count toward the 5% cap on franchise fees but instead is a PEG capital cost that can be imposed on the cable operator at their cost. However, the marginal cost of the associated maintenance and operations costs for PEG transport facilities in fact do count towards the 5% cap on franchise fees (or can be charged for by the cable operator or offset from the franchise fee paid to PCTA).<sup>15</sup>

However, one federal district court in an unpublished decision interpreted DIVCA as *not* imposing on the state franchise holder the obligation to provide PEG transport facilities at its cost. Rather the court held it was the local entity’s responsibility to obtain PEG transport and to pay for the installation of PEG transport facilities in addition to the associated maintenance and operations costs.<sup>16</sup> This opinion is a federal court’s interpretation of state law, which is not

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<sup>11</sup> Pub. Util. Code §5860(i).

<sup>12</sup> Third Section 621 FCC Order, 84 Fed. Reg. 44,725-01 (Aug. 27, 2019).

<sup>13</sup> In the 2019 Order, the FCC said the “fair market value” of the in-kind contributions could be recovered by the cable operator. However, recently, the Sixth Circuit in *City of Eugene, Oregon v. FCC*, 998 F.3d 701 (6th Cir. 2021), declared that cable operators can only charge for or offset against the franchise fee cap, the marginal cost of providing the benefit rather than the fair market value.

<sup>14</sup> PEG transport facilities are the equipment that local governments use to deliver PEG programming from the studio, city hall or other location where PEG programming is produced and provided to the cable operator for distribution at the cable headend to be cablecast to the subscribers.

<sup>15</sup> See FCC 18-90, para. 49.

<sup>16</sup> See *City of Del Mar v. Time Warner Cable Enterprises, LLC* (S.D. Cal., Nov. 27, 2017, No. 317CV00186CABNLS) 2017 WL 6945089 (“Del Mar”).

binding on state courts. Even if the interpretation is correct (and we don't think it is), federal law would arguably still limit the amount the state video franchise holder could charge to its marginal costs.

In practice when a dispute arises over the who pays for PEG transport facilities in California, local governments must either litigate or reach agreement to pay some amount. Typically, local governments agree to pay an amount from their existing collected PEG fees for the installation of the PEG transport facilities, and then a monthly recurring fee that may be higher than the marginal cost.