

File No. 091408

Committee Item No. 8
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date August 5, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Youth Commission Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

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Completed by: Linda Wong

Date July 30, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Approving Settlement of Unlitigated Claim Against the City by Comcast.]

2
3 **Resolution approving settlement of an unlitigated claim made by Comcast Cable**
4 **Communications, LLC against the City and County of San Francisco.**

5
6 WHEREAS, In 2006, the State of California enacted the Digital Infrastructure and
7 Video Competition Act ("DIVCA") (Cal. Pub. Util. Code, § 5800, et seq.); and

8 WHEREAS, In DIVCA the State of California granted the California Public Utilities
9 Commission ("CPUC") exclusive right to grant video franchises; and

10 WHEREAS, As allowed under DIVCA, Comcast Cable Communications, LLC
11 ("Comcast") elected to abrogate its cable franchise with the City and County of San
12 Francisco ("City"); and

13 WHEREAS, Since January 2, 2008, Comcast has been providing video services in
14 San Francisco under a franchise issued by the CPUC; and

15 WHEREAS, Under DIVCA, the City may establish by ordinance a fee to be paid by
16 state video franchise holders providing services in San Francisco to support the City's public,
17 educational and governmental access channel facilities ("PEG Fee") (Cal. Pub. Util. Code, §
18 5870(n)); and

19 WHEREAS, On March 3, 2009, the Board of Supervisors introduced an ordinance that
20 would establish a PEG Fee in the amount of three percent (3%) of a state franchise holder's
21 gross revenues from providing state video services in San Francisco; and

22 WHEREAS, Comcast informed the City that Comcast believed the PEG Fee proposed
23 in the ordinance would violate DIVCA, and Comcast expressed its intention to pursue legal
24 action against the City on this basis; and

1 WHEREAS, In Ordinance 99-09, the City established a PEG Fee in the amount of one
2 and one-fifteenth percent (1.15%) of a state video franchise holder's annual gross revenues
3 from providing state video services in San Francisco; and

4 WHEREAS, Comcast is willing to resolve this matter by entering into the Settlement
5 Agreement on file with the Clerk of the Board of Supervisors in File No. ⁰⁹¹⁴⁰⁸, which is hereby
6 declared to be a part of this resolution as if set forth fully herein; now, therefore, be it

7 RESOLVED, That pursuant to Section 10.22 of the San Francisco Administrative Code,
8 the Board of Supervisors authorizes the City Attorney and the Department of Technology to
9 settle the unlitigated claim made by Comcast against the City on the terms and conditions
10 contained in the Settlement Agreement.

11 APPROVED:

12 DENNIS J. HERRERA
13 City Attorney

14 By: 

15 William K. Sanders
16 Deputy City Attorney

RECOMMENDED:

DEPARTMENT OF TECHNOLOGY

17 By: 

18 Chris A. Vein
19 Director and Chief Information Officer

Settlement Agreement
City and County of San Francisco, California (“City”), and Comcast Cable Communications, LLC

This Agreement is made and entered into this 2nd day of June, 2009, by and between the City and County of San Francisco, California (“City”), and Comcast Cable Communications, LLC, and its affiliates and subsidiaries (herein referred to individually and collectively as “Comcast”).

RECITALS

WHEREAS, in 2006, the State of California enacted the Digital Infrastructure and Video Competition Act (“DIVCA”) (Cal.Pub.Util.Code, § 5800, et seq.);

WHEREAS, in DIVCA, the State of California established the California Public Utilities Commission (“CPUC”) as the exclusive video franchisor;

WHEREAS, as allowed under DIVCA, Comcast elected to abrogate its cable franchise with the City;

WHEREAS, since January 3, 2007, Comcast and has been providing video services in San Francisco under a state franchise issued by the CPUC;

WHEREAS, under DIVCA, local entities may establish by ordinance a fee to support channel facilities and activities related to Public, Educational and Government Access television (the “PEG Fee”) (Cal.Pub.Util.Code, § 5870(n));

WHEREAS, on March 3, 2009, the Board of Supervisors introduced an ordinance that would establish a PEG Fee in the amount of three percent (3%) of a state franchise holder’s gross revenues; and

WHEREAS, Comcast has informed the City that Comcast believes the proposed PEG Fee in the amount of three percent (3%) would violate DIVCA.

WHEREAS, in Ordinance 99-09, the City established that any State Video Franchise holder providing State Video Service in the City shall pay to the City a fee to support the ongoing costs of public, educational, and government access channel facilities in the amount of one and one-fifteenth percent of the State Video Franchise holder's annual Gross Revenues from providing State Video Services in the City.

NOW, THEREFORE, Comcast and the City, in consideration of the promises contained herein and subject to the terms and conditions set forth below, agree as follows.

TERMS

1. **Payment to the City.** Comcast shall pay the City the sum of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$375,000.00), which amount shall be due and payable within fourteen (14) days of final execution of this Agreement. The City may use the payment required herein to support the City's public access channels, including paying the operating expenses of those channels. The payment required herein is not a "Franchise Fee" as that term is defined in Section 622(b) of the Cable Act (47 U.S.C. § 542(b)). Comcast will not include the payment required herein as a separate line item, or as part of its PEG Fee line item, on its bills to San Francisco video service subscribers.
2. **Initial PEG Fee.** The initial PEG Fee that the City will require from Comcast under Cal.Pub.Util.Code, § 5870(n) will not exceed one and one-fifteenth percent (1.15%) of Comcast's gross revenues, calculated in a manner consistent with DIVCA.
3. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties regarding the subject matter of this Agreement. No statements, promises, or inducements inconsistent with this Agreement made by any party shall be valid or binding, unless in writing and executed by all parties.
4. **Governing Law.** This Agreement shall be interpreted, governed by, and construed under the laws of the State of California. Jurisdiction of any disputes hereunder shall be had in San Francisco.

5. **Modification.** No modification or change to this Agreement shall be binding or effective unless executed in writing by both sides. No oral statement shall in any manner modify or affect the terms and conditions set forth herein.
6. **Non-waiver.** The waiver by either party of any breach of any term, covenant or condition contained in this Agreement, or any default in the performance of any obligation under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same.
7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
8. **Authorization.** Each person executing this Agreement warrants to the other party that he or she is fully authorized to enter into this Agreement in the capacity indicated by his or her signature below.
9. **Board of Supervisors Approval.** The City shall cause this Agreement to be submitted to the Board for approval. Notwithstanding anything herein to the contrary, Comcast understands and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Board shall taken an action approving this Agreement, and such action has been approved by the City's Mayor or become effective without the Mayor's approval. Therefore, any obligations of the City hereunder are contingent upon such approvals, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City's Charter. In the event this Agreement is not approved by March 31, 2010, then this Agreement shall terminate and shall be of no force and effect whatsoever. In the event that the City approves this Agreement, the effective date of the approving action shall be the effective date of this Agreement, (the "Effective Date").

10. Negotiated Settlement. Each of the Parties hereto and their respective counsel and advocates have contributed to the preparation of this Settlement Agreement. Accordingly, the Parties agree that no provision of this Settlement Agreement shall be construed against any Party because that Party or its counsel drafted the provision. This Settlement Agreement shall become effective among the Parties on the date the last Party executes the Settlement as indicated below.

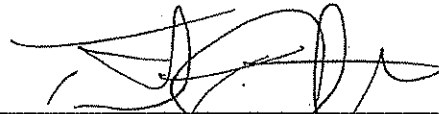
In witness whereof, intending to be legally bound, the Parties hereto have duly executed this Settlement Agreement on behalf of the Parties they represent.

Dated: _____



Chris Vein
Title: Chief Information Officer,
Director, Department of Technology

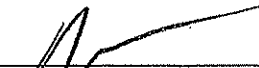
Dated: 10-23-2009



Comcast Cable Communications LLC
Title: VP-Finance & Accounting

Approved as to Form

Dated: 11/09/09



William Sanders
Deputy City Attorney

File # 091408
c. Rules members



Maxine
<mistressmax@mindspring.com>

01/05/2010 10:51 PM

To <Linda.Wong@sfgov.org>

cc

bcc

Subject Item # 15 of Rules committee meeting

Greetings, please let the board of sups know that I oppose the disbursement of this grant money to BAVC. BAVC has shut out important community based media and the board ought not support giving that vital service to this group.

Maxine Doogan

<http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=35241>

File # 091408

Julian P. Lagos
128 Garces Drive
San Francisco, CA. 94132

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 JAN - 6 PM 3:00
BY _____

January 6, 2010

VIA PERSONAL DELIVERY

San Francisco Board of Supervisors' Rules Committee
Honorable Supervisor Michaela Alioto-Pier
Honorable Supervisor Chris Daly
Honorable Supervisor David Campos
c/o Ms. Linda Wong, Clerk, Rules Committee
1 Dr. Carlton B. Goodlett Place - City Hall, Rm. 263
San Francisco, California 94102

RE: Agenda Item No. 15 - Approving Settlement of Unlitigated Claim Against the City by Comcast.

Dear Honorable Supervisors:

I am writing to you in response to Rules Committee Agenda Item No. 15 on calendar for hearing on Thursday, January 7, 2010, at 10 a.m. in Room 263 of City Hall.

I oppose any disbursement of public funds from the Comcast Settlement Claim to the Bay Area Video Coalition (BAVC), the new operator of San Francisco Public Access Television, for the following reasons:

1. BAVC closed the state-of-the-art public access station at 1720 Market Street on 12/18/09 without renegotiating a new lease or filing a City-approved, alternative transitional plan, as required by the Grant Agreement signed on 8/20/09. Rent at the current location is paid for by the City through 4/30/10 (Lease Termination Date).
2. Since 12/30/09, BAVC has dropped all previously-scheduled programming, including "Democracy Now", and replaced it with a continuous 6-hour loop of shows (24/7) on both public access channels 29 and 76, a violation of the Grant Agreement;
3. BAVC has stopped Internet streaming of both channels and failed to post a daily broadcast schedule on its website, BAVC.org, violations of the Grant Agreement;
4. During a two-day period (12/21-12/22/09), BAVC management was observed giving away thousands of dollars of station property to a private party, without compensation or recording of the transfers, violations of the Grant Agreement;
5. To date, BAVC has yet to publicly disclose how it intends to use any public funding it receives in the best interests of public access television, a violation of the Grant Agreement.

It is apparent from the aforementioned reasons that BAVC has no intention of abiding by the Grant Agreement and therefore cannot be held accountable with any further City funding. I strongly urge you to oppose any disbursement of funding from this settlement to BAVC.

Sincerely,


Julian P. Lagos

File # 091408
c. Rules members



Linda Wong/BOS/SFGOV
01/06/2010 08:24 AM

To Chris Daly/BOS/SFGOV, David Campos/BOS/SFGOV,
Michela Alioto-Pier/BOS/SFGOV,
cc
bcc
Subject Fw: BOS Rules Committee, January 7, Item #15 (Comcast
Grant to Public Access TV

----- Forwarded by Linda Wong/BOS/SFGOV on 01/06/2010 08:24 AM -----



deetje <deetje@aol.com>
01/06/2010 12:30 AM

To Linda.Wong@sfgov.org
cc speakingup <speakingup@aol.com>
Subject BOS Rules Committee, January 7, Item #15 (Comcast Grant
to Public Access TV

Rules Committee, Rm 263

SF Board of Supervisors

Re: Item #15, (OPPOSING No. 091408 - Approving Settlement of Unlimited Claim Against the
City by Comcast)

Due to its unacceptable mismanagement of our Public Access channels, BAVC should not be
granted any funding to run AccesSF (which they have renamed SF Commons).

Why not? BAVC closed and locked the doors of our Market Street facility on December 18,
preventing us from using AccesSF's equipment to produce our programs, and as of that date laid
off the staff that had been running it. BAVC then closed down for vacation, leaving behind a
broken-down shambles of transmission, with inexperienced personnel unable to handle the
needs. The streaming of Channel 29 and Channel 76, our two community TV channels was
discontinued, the calendars listing the scheduled programs disappeared from the website (the
only source for the schedule), and instead of the normal programming, old movies, scraps of this
that and the other and who knows what, was being sent out identically on both cable channels.
This continues till the present time. Specifically, my program, EVERY VOICE, which is
scheduled for 7 pm on the first and third Tuesdays of the month, was not shown, which lack was
apparently the case for everyone with scheduled programs.

No one answered the phone over the holidays; its message cheerily said that BAVC would be
closed until January 4th. An e-mail to Ken Ikeda, the executive director, resulted in an e-mail
response promising that an e-mail newsletter explaining the situation would be forthcoming.

So, we producers have been shut out of our facility for which the City continues paying rent, our
programs are not being run, no staff assistance has been available to take care of any functions.
This is not adequate management.

Hey, guys! Remember Ethel M erman? "There's no business like show business. Let's go on with

the show." How do we explain this lapse after all these years of uninterrupted programming?

BAVC is simply not set up to absorb the unique structure of community television, with its cooperative/independent style of production and its unique needs for facilitation in use of the equipment and its unique local output.

Meanwhile, BAVC has not met the terms of the agreement made with the City. It has only been full of hot air and no follow-through. Even before BAVC shut down AccesSF broadcasting completely, they were limiting training and facilitating use of iMovie for producers, which had been available prior to their takeover. Live programming from the Flash Studio has been totally interrupted. And now they are not even showing our local programming. We need responsible management of our Community TV assets at Market Street; we don't need empty promises of being squeezed in to ongoing programs and the limited space (which they'll be losing soon anyway) at BAVC on Mariposa.

The wasteful plan to renovate the insides of the Market Street facility at a deconstruction cost to the City of \$200,000 should not be pursued. That space was improved at City's expense for the purpose of meeting community TV needs, and that investment should not be wasted. Furthermore, BAVC should be prevented from dispersing any more of the equipment and furnishings from the Market Street facility; they are City property. Another management plan should be arranged that would not be wasteful, one that is sincerely and fully dedicated to the goals (free, cooperative access to and training in television production) of community television for San Francisco.

Sincerely,

Deetje Boler - 567-8446
Producer, EVERY VOICE
Twice a month since 2003