

# MID-COAST TELEVISION, INC.

525A Obispo Road  
P. O. Box 1750  
El Granada, California 94018

March 16, 2011

James Porter, Director, Public Works Dept.  
San Mateo County  
555 County Government Center, 5<sup>th</sup> Floor  
Redwood City, California 94063

**Re: MCTV's Comments on the Public Works Dept. Decision on the Protest  
regarding Public, Educational and Governmental Access for the Unincorporated  
Coastside and the City of Half Moon Bay**

Dear Mr. Porter:

MCTV believes that your responses to the issues raised in the MCTV protest are not supported by the facts, misstate both the PCT and MCTV proposals, and, in several cases, simply fail to directly address deficiencies in the PCT proposal identified by MCTV. We continue to believe that the PCT proposal is, on the whole, inferior to that of MCTV for the following reasons:

**1. The PCT Proposal does not commit to tape all the public meetings that MCTV currently tapes, nor does it disclose the cost of taping such meetings**

Your letter clearly mischaracterizes the PCT proposal, which speaks of having the City and County pay for taping of the CUSD, GSD, CCWD, SAM, and MWSD meetings (p. 5). There is no commitment to tape all 8 public meetings on page 11 of the proposal as you state, nor any financial budget which identifies the costs of taping and playing back such meetings. The PCT proposal at p. 11 states that it will "provide these services **to the requesting agencies** for the same level **these agencies paid during the last fiscal year.**" The "requesting agencies" are the City and the County who requested proposals for PEG Access service. They do not include the other five agencies. In addition, the PCT budget attached to the proposal shows no indication of any income from fees charged for taping the meetings of these five additional agencies. It is not possible to fairly compare the PCT budget proposal to that of MCTV because it omits key expenses and revenues. While the RFP chose not to make it mandatory for the PEG provider to cover the meetings of these five agencies, that coverage is an important and popular part of MCTV's existing service to the community. MCTV's proposal is clearly superior to that of PCT because we commit to continue covering these agencies' meetings and clearly identify the costs, while PCT does neither.

**2. The PCT proposal does not identify the specific equipment to be used to archive public meetings or make them available online, nor does it identify the costs of such equipment.**

MCTV already possesses the equipment to archive and show public meetings online, and has years of experience in offering this service. Pacifica does not have the capability to offer these services at present, and other than a bald assertion that it can do so, it offers no credible plan for what equipment it will obtain or how much it will cost. Its proposal cannot be judged superior to MCTV's in this regard.

**3. The PCT proposal displays profound ignorance of the facilities used to provide live feeds for the City Council and MCC meetings by MCTV**

Your response provides no means for finding that PCT's proposal is superior to MCTV's simply because PCT states that it would "prefer" to have live coverage of the meetings. PCT admitted in its proposal that it was unaware of the franchise requirements for PEG Access—which include the live feed provisions. While it is about time that PCT and the County tried to educate themselves on this subject by talking to Comcast, your letter neglects to mention that MCTV has already explained in its protest that switching the live feeds to PCT could involve substantial costs that would drain available PEG capital account monies. While the RFP did not require the bidding providers to continue to offer live coverage (which must be considered a huge mistake on the part of Public Works in drafting the RFP), the MCTV proposal must still be adjudged superior to that of PCT because we have the ability to continue live coverage without any additional costs or new facilities. MCTV has demonstrated the ability to provide an important form of PEG service which PCT does not now have the ability to provide, and the PCT proposal is silent on the cost of obtaining that ability.

**4. PCT's lack of a demonstrated ability to offer public meeting coverage through video on demand renders its proposal inferior to MCTV**

While your letter states the RFP did not require video on demand of public meetings or other programs, both the County and City should be aware that the public agencies whose meetings are taped by MCTV have repeatedly requested and contracted for this service for years. MCTV already provides the ability to show meetings via video on demand even if they are four or more hours long. PCT cannot. Whether this is a requirement of the RFP or not, the ability to offer this service renders MCTV's proposal superior to that of PCT. PCT's proposal has no information about the cost or time required to develop a similar service.

**5. PCT does not explain how Coastside programming will be integrated into its existing program scheduling**

Your decision letter states that “it is anticipated that many programs that currently exist on PCT will be of interest to the coastal PEG viewers.” Whose anticipation are you referring to? More to the point, we strongly doubt that Pacifica viewers will thrill to hours of public meeting programming involving Coastside water and sewer agencies, school districts, and community councils. There is a serious problem in trying to put all this programming in prime time on one channel. You state that PCT did not specify channel placement in its proposal. That is inaccurate. On page 9, PCT talks of “our channel” and “having Comcast switch the signal to coastsiders.” Channel 26 on the Coastsiders is already occupied by Pen TV. There is only one other PEG channel available on the Coastsiders (Channel 27), and only one channel mentioned in the PCT proposal where the Coastsiders programming can go—PCT’s existing channel. PCT clearly states its intention to send its current channel programming to the Coastsiders over Channel 27. MCTV’s proposal is superior because it allows more programming room for local Coastsiders programs.

**6. The existence of a PCT office does not make up for an “absentee community liaison”**

You effectively ignore this aspect of MCTV’s protest and merely recite that PCT has an office, a telephone and an email address. If that is what the County believes is sufficient community outreach, MCTV could have shortened its proposal considerably. PCT specifically identified as its community liaison someone who lives in Sacramento and will not be readily available on the Coastsiders. We also strongly object to your characterization that PCT is “conveniently located” over the Slide in Pacifica. There are real consequences involved in asking Coastsiders to travel over the hill at night for PEG events. It will strongly discourage participation, as explained in MCTV’s proposal. MCTV’s proposal must be considered superior to that of PCT by virtue of its location in the center of the Mid-Coast and its pledge to have a Coastsiders resident readily available to act as community liaison.

**7. The Decision Letter grossly misstates the comparison between the MCTV and PCT budget proposals**

PCT’s proposal contained no reference to PEG capital funding available under the City and County franchises because PCT made no effort to understand what the franchises actually said. MCTV has spent years negotiating with previous cable operators on behalf of the County and City in order to secure such funding. If the County did not “deem it necessary to give this information to proposers”, a proposer with any sense would have at least looked at the franchise and PEG access agreements to see what the existing funding arrangements were. PCT did not do this. MCTV did.

Your letter also mischaracterizes these arrangements by stating that no County capital funding payments will be received during the term of the three year contract at

issue under the RFP. This is clearly wrong. There is a balance in the current County capital PEG fund that could be spent during the three year term. The May 2011 funding from Comcast will also be available to be spent during the three year term. Under current procedures, these funds are not automatically spent. The PEG Access provider must seek to obtain the funds by submitting a receipt or a purchase order to the Public Works Dept., a procedure you should be familiar with, as MCTV has used this method in the past. In addition, your letter misstates the MCTV proposal regarding capital funding. MCTV did not include a proration of the 2016 payment in its proposal, it included a one-fifth proration of the May 2011 payment that will clearly be available before the start of the contract in September of 2011.

You also state that the RFP did not include mention of the 1% DIVCA fee. This fund is available as a result of an ordinance passed by the City of Half Moon Bay to “support PEG facilities”. These funds cannot be used by the City for any other purpose. Under state law they are reserved for supporting PEG access. There is no reason for them not to be considered in PEG Access budget proposals. Having said that, MCTV’s projections of future capital funding are just long term estimates. PCT offered no such estimates. However, it is completely unrealistic to believe that PCT can operate its equipment round the clock for the term of the contract without having to replace any of its equipment (let along the additional equipment it does not now possess but will need to purchase in order to do all that it has promised to do!). Accordingly, MCTV submits there is no reason to conclude that MCTV’s estimates of capital funding render its proposal inferior to PCT, because PCT simply did not address the important element of capital equipment funding at all.

In addition, your letter reflects a misunderstanding of MCTV’s proposed budget and its commitment to live within existing franchise funding. MCTV did reserve the right to withdraw its proposal if the County or City materially reduced its existing level of franchise fee support—because the RFP made the unrealistic proposal that the new PEG provider run a television channel with no franchise fee support at all. Perhaps the only thing that MCTV, PCT, and Pen TV agree on is that this was a completely unrealistic suggestion.

However, MCTV has committed to continue to operate within the available franchise funding (2% of Comcast gross revenues) whether that amount goes up or down. In its proposal, MCTV estimated a 6% annual increase in the franchise fees because Comcast has raised its rates following the digital build out. Recent receipts would seem to support MCTV’s estimate that the fees will increase slightly this year.

It is important to clarify that MCTV did not indicate that it would withdraw its proposal if franchise fees were lower due to lower Comcast revenues—but only if the County or City reduced the 2% fee contribution. In essence, MCTV is proposing to operate on the same franchise fee funding as PCT with only minor differences (current year fees vs. last year’s fees). However, MCTV’s budget also includes the fees for taping the meetings of the five agencies aside from the County, City and MCC, while PCT is silent on the fees it would charge these agencies.

Again, it is not possible to conclude that PCT's proposal is superior to MCTV's in terms of budgetary impacts because the PCT proposal is missing key elements that will have to be resolved in order for PCT to provide the same level of public meeting programming that MCTV already provides.

## 8. Conclusion – The Protest should be upheld

In **none** of the issues discussed above is the PCT proposal superior to that of MCTV, and in virtually all of them it is decidedly inferior, or at the least, grossly incomplete. MCTV has focused on the important issues discussed in your letter<sup>1</sup>, and established that PCT does not offer service that “far exceeds” MCTV's capabilities. If PCT someday offers credible evidence that it can obtain those capabilities, it did **not** do so in its proposal. Our understanding of the protest procedure is that your responsibility was to judge the proposals based on their content, **not what you believe PCT may be able to do in the future to cure the defects in their proposal**. As explained above, we see no logical way to conclude that the PCT proposal is, on the whole, superior to that of MCTV, and will raise these issues with the Board of Supervisors and the City Council.

As indicated in our protest, we see no reason for the County and City to select a provider to replace the existing provider, MCTV, who has successfully operated the PEG channel for 25 consecutive years, unless the new provider will offer equivalent or superior service at a similar cost. As explained above, the PCT proposal does not meet this standard. Nor is it appropriate for the Public Works Department to deny our protest based on what is essentially speculation about what PCT may be able to do in the future, or what it might agree to in a contract.

Please contact me directly if you have any questions regarding MCTV's comments on your decision on the MCTV protest.

Very truly yours,

Michael Day  
Counsel for Mid-Coast Television

cc: San Mateo County Board of Supervisors  
Half Moon Bay City Council  
Laura Snideman, City Manager, City of HMB  
Warren Slocum, President, Pen TV

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<sup>1</sup> MCTV offered in its proposal “marketing” and social media proposals very similar to that of PCT. MCTV also concedes that PCT does have a website at [pct26microcommunity.org](http://pct26microcommunity.org), as indicated in your letter, but notes that the name of the site is virtually a typo for “microcommunity” and it will be interesting to see how useful such a skillfully concealed site is for the community.

Martin Anaya, Exec. Dir. PCT26  
HMB Review