



June 26, 2023

To: Metropolitan Cable Television Commission  
 From: Anne Davies, Lane Council of Governments  
 Subject: 2023 PEG Grant Distributions/Update on Franchise Renewal

**Action Recommended:** Approval of Staff Recommendations for 2023 Grant Cycle

**I. PEG Grant Distributions**

**A. Background**

Under the current cable franchise agreement that Eugene, Springfield and Lane County have with Comcast, Comcast provides an annual payment of \$50,000 for distribution to PEG (Public, Educational, Government) broadcast channels. (There is a separate \$50,000 contributed for Metro TV Government Channel capital expenditures.) The Metropolitan Policy Committee uses that money to make awards of funds for capital improvements to the PEG channels. A separate reserve account of \$150,000 has been set aside to cover projected costs of installing a signal collection system (cameras and routers and fiber) in the new Eugene City Hall.

Staff sent out a general solicitation notifying potential grant recipients (PEG broadcast channels) that approximately \$73,000 in funding is available for distribution. Staff received three applications, one from Eugene/Springfield Fire Training Channel (see Attachment 2), one from Community Television (see Attachment 3), and one from the Education Channel (see Attachment 4). Past awards and the 2023 requested amounts are as follows:

	2017	2018	2019	2020	2021	2022	2023
City of Eugene							
City of Springfield							
Community TV	\$6,285	\$16,816		\$9,200	\$19,400	\$16,000	\$37,500
ES Fire Training	\$8,820	\$15,400	\$24,500	\$32,000	\$22,200	\$8,200	\$17,863
LCC (Education)	\$10,700				\$30,040	\$9,700	\$11,708
<b>Total</b>	<b>\$25,805</b>	<b>\$32,216</b>	<b>\$24,500</b>	<b>\$41,200</b>	<b>\$71,640</b>	<b>\$33,900</b>	<b>\$67,071</b>

Representatives of the jurisdictions and Metro TV technical staff met to review the applications.

Staff recommends that the grant of funds be awarded as provided below, but with the stipulation that any programming developed with the grant funded equipment be aired on a PEG channel.

#### B. Recommendation

Staff recommends distribution of the total amount of funds requested by the applicants as follows:

Eugene Springfield Fire Training	\$ 17,863
Community Television	\$ 37,500
Education	\$ 11,708

A detailed list of the items recommended is attached to this memo as Attachment 1. Staff recommends that any funds not used in this grant cycle be rolled over to next year.

Staff also recommends that a stipulation be included that any programming developed with the grant funded equipment be aired on a PEG channel.

#### C. Next Steps

If the MPC agrees with Staff's recommendation, a motion such as "I move to approve the Staff Recommendations for distribution of the 2023 PEG grants," would be appropriate.

If the MPC wishes to alter the amount of any award, a motion making those changes would be appropriate.

If the MPC approves an award, the next steps will be to purchase the equipment. Neil Moyer has established a string of qualified vendors and may be able to obtain better pricing. LCOG will purchase the equipment with the grant funds and deliver the equipment to the applicants.

## II. Franchise Renewal Update (Information Only)

#### A. General Telecom Background

The following is provided, for informational purposes only, to update the cable commission about ongoing negotiations with Comcast regarding renewal of the Comcast cable television franchise, and to provide a refresher on the basics of cable franchising in general.

Many utilities and other businesses use city/county rights of way to locate necessary infrastructure that enables their utilities and businesses to function. With some exceptions, cities must allow these entities to place their infrastructure in the public

right of way. However, cities are authorized to charge those entities a reasonable fee for use of the public right of way.

The Federal Cable Act (originally adopted in 1984) prohibits local governments from charging a cable company more than 5% of gross revenues generated from provision of cable services. In keeping with that cap, most jurisdictions throughout the country collect 5% of gross revenues from cable companies for the provision of cable services. Further, federal law prohibits local governments from “unreasonably refusing to award competitive franchises for the provision of cable services.” Section 621(a)(1) of the Communications Act of 1934.

As technology has changed and progressed, the methods for providing video services, such as those historically provided via cable infrastructure, have evolved. While there are now many ways of providing similar video programming services, they are all regulated differently, under different provisions of federal, state, and local laws, depending on the infrastructure that is required. The regulations and restrictions provided in the federal Cable Act, including the provision prohibiting local governments from refusing to award competitive cable franchises, however, applies only to providers of video programming that rely on a cable system.

#### B. History of Metropolitan Cable Television Franchise

In the Eugene/Springfield area, the original cable franchise with Comcast’s predecessor was adopted in 1989. Eugene, Springfield, and Lane County currently have a 10-year franchise with Comcast, which was last renewed in 2007. This franchise had an expiration date of August 1, 2018. That expiration date was first extended to January 1, 2019 by each of the jurisdictions’ elected bodies, and has since been extended to December 31, 2022, and most recently to December 31, 2024.

#### C. Franchise Renewal

Staff and Comcast have discussed and resolved many issues with regard to the franchise renewal in the past five years. As the past five years have seen many changes in regulation out of the FCC (Federal Communications Commission) and the court decisions, however, staff may need to revisit some of the issues that were previously considered resolved. That said, there are two main issues that remain unresolved. Those include: 1) the removal of the Springfield customer service center, and 2) competitive equity. Staff had proposed a solution to the impasse on these two issues, which is outlined in the memorandum, dated June 10, 2022 provided to Comcast last year. See Attachment 5. At the time, Comcast rejected that proposal out of hand. See Attachment 6.

The following is a bit more background on those issues than what is provided in the June 10, 2022 memo.

- Springfield Store

The current franchise requires an office in both Springfield and Eugene. Earlier in the franchise term, the Springfield office was closed, and the Eugene office was moved to Valley River Center. An amendment to the franchise did not accompany the closure of the Springfield office, although Comcast did provide some funds at the time. In order to remove the requirement for a Springfield office in the new franchise agreement, the parties had agreed, prior to last year, that Comcast would provide a one-time payment to Springfield of \$75,000.

However, when negotiations were re-started last year, Comcast withdrew that agreement. Comcast has since opened a store in Springfield, based on community need, and there appears to be some movement by Comcast off of their position outlined in their June, 2022 letter, at least with regard to the store issue. Negotiations are ongoing.

- Competitive Equity Provisions

In summary, Comcast's proposal regarding competitive equity would require the jurisdictions to treat all wireline providers of video programming the same. The draft language purports to require the jurisdictions to force competitor non-cable video providers to obtain a franchise, because Comcast requires a franchise to operate. A basic understanding of the Cable Act and the different video services currently being provided in this area makes clear why the jurisdictions cannot agree to the addendum as proposed by Comcast.

First, the Cable Act (Section 621) requires only that cable operators be treated the same as other cable operators. The proposed franchise language imposes a burden on the jurisdictions that is above and beyond that provided in federal law. Second, the jurisdictions do not have authority to do what the proposed language would require of them. Lane County does not have authority to franchise and charge for use of the right of way outside of the Cable Act. So it cannot require a franchise of a company that is not a cable operator. Eugene's telecom ordinance provides for a registration and license to use the ROW (rather than a franchise) for telecommunications providers that are not Cable Operators subject to the Cable Act. The ordinance does not authorize the City to impose other obligations like certain levels of service, customer service requirements, etc. Springfield has a similar utility ordinance and license.

That said, Staff understands Comcast's concern that other providers of video programming services may be treated preferentially to Comcast because they are not cable operators. Accordingly, staff proposes that, in the event a potential competitor seeks to enter the market, Comcast would

seek a declaratory ruling from a court of competent jurisdiction whether that alleged competitor qualified as such under the Cable Act. The jurisdictions would abide by the court's ruling.

### C. Summary

Staff is set to meet with Comcast again in July or August. While negotiations regarding the Springfield store appear hopeful, the parties appear to be at an impasse regarding competitive equity. Staff proposes to update the commission in the fall with any progress and possible next steps.

### **Attachments**

1. Staff recommended awards
2. E&S Fire Training application
3. Community Television application
4. Education Channel application
5. Memorandum to Comcast dated June 10, 2022
6. Comcast letter dated June 21, 2022