

RESOLUTION NO. 2005-01

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE MARIN TELECOMMUNICATIONS AGENCY
ORDERING THAT CHANNEL 26 MAY NOT BE USED FOR
PRIVATE COMMERCIAL PROGRAMMING**

The Board of Directors of the Marin Telecommunications Agency hereby finds, orders and resolves as follows:

Section 1. This resolution is adopted with respect to the following recitals:

- A. When the Marin Telecommunications Agency (the “MTA”) was established in 1998, its eleven members transferred and assigned their individual cable television franchises that were entered into originally with Viacom Cablevision (the “franchise agreements”) to the MTA. Comcast is the current franchisee and cable operator under these franchise agreements.
- B. Section 10 of the franchise agreements requires Comcast to provide and maintain at least one community programming channel. Section 1(E) of the franchise agreements defines community programming channel as any channel where residents and non-profit organizations may be a programmer for non-commercial purposes. Read together, these two sections of the franchise agreements describe the permitted uses of the community programming channel capacity as being limited to non-commercial programming provided by Marin County residents, public organizations, and educational/governmental institutions and Comcast (as the current franchisee and cable operator). The franchise agreements do not authorize the use of the community programming channel for private commercial programming.
- C. The community programming channel is located on Channel 26. This channel has been and currently is being used by Marin County residents and organizations for public, educational and governmental (“PEG”) programming authorized by the franchise agreements.
- D. Without seeking the permission of the MTA, Comcast is using Channel 26 for private commercial programming in addition to the PEG programming authorized by the franchise agreements.
- E. The Board hereby determines that Comcast’s use of Channel 26 for private commercial programming violates Section 10 of the franchise agreements.
- F. Section 611(d) of the Communications Act of 1934, as amended, provides that when one or more channels are designated for PEG uses by a franchise agreement, the franchising authority shall prescribe rules and procedures under which the cable operator is permitted to use such channel capacity for

the provision of other services if such channel capacity is not being used for the designated purposes.

G. In order to avoid any uncertainty about the proper uses of Channel 26, the Board desires to adopt rules pursuant to Section 611(d) that will prohibit the use of Channel 26 for private commercial programming since this channel is being used for PEG programming.

Section 2. In accordance with Sections 1(E) and 10 of the franchise agreements and pursuant to Section 611(d) of the Communications Act of 1934, as amended, the Board hereby resolves, determines and orders that Channel 26 may not be used by Comcast or any other party for private commercial programming since Channel 26 is being used for PEG programming purposes as authorized by the franchise agreements.

Adopted this 9th day of March, 2005.

Ayes:
Noes:
Absent:

Chairman

Attested By:

Clerk