

April 25, 2011

To: Buncombe County Commissioners
From: Michael C. Frue
Re: URTV and Department of Revenue distribution of part of sales taxes
Supplemental PEG channel support

During public comment at last Tuesday night's Board meeting two citizens cited portions of North Carolina General Statutes in support of the idea that URTV is entitled to the same proportionate level of continued funding support from franchise tax revenues paid to the County as it received in 2006 - 2007. This interpretation is not correct.

Before I attempt to explain the applicable revenue statutes, I believe I should first clear up a common misunderstanding regarding the County's management agreement with URTV: there is none. The agreement, dated February 1, 2005, titled "Management Agreement with URTV, Inc.," provided that URTV agreed to act as an independent contractor in order to operate a public access cable channel and to provide other services. That agreement had a five (5) year term and expired on February 1, 2010 due to the failure of URTV to request an extension. Since that time there have been no requests and no discussions regarding the negotiation of a new agreement. I understand that URTV currently has a management agreement in place with the City of Asheville and that it may expire in the near future.

Very generally, a PEG channel is a "public, educational, or governmental access channel," and the Secretary of State is now the exclusive franchising authority for cable services in the State. The Department of Revenue collects a privilege tax on the gross receipts derived from providing telecommunications services, and it distributes part of those taxes to cities and counties. The share of a city or county is calculated by the State pursuant to G.S. §105-164.44(c) and (d). In fiscal year 2006 - 2007 that distribution was \$1,302,736. In accordance with G.S. §105-164.44(e) a portion of the funds distributed "must be used for PEG channel operation." In addition, the amount of funding for PEG channel support is to continue at the same proportionate amount as the County's PEG funding through subscriber fees as compared to franchise tax revenue received. Mr. John Howell calculated that funding ratio to be 5.79%.

However, there is no directive in G.S. §105-164.44i concerning division of these funds among qualifying public, educational, or governmental access channels. With the expiration of the Management Agreement between Buncombe County and URTV, County government has made the decision to distribute the tax revenue to its governmental access channel, BCTV. This is a legislative decision made in the discretion of the governing body as authorized by G.S. §105-164.44i. URTV is not entitled to this revenue.



Re: URTV and Department of Revenue distribution of part of sales taxes
Supplemental PEG channel support

PAGE TWO

Supplemental PEG funding is different. If certified, a qualifying PEG channel must be allocated an equal share of the supplemental support funds the certifying county or city receives. URTV receives an equal share of this supplemental PEG channel support.

In order to receive supplemental PEG channel support funds a city or county must certify to the Department of Revenue all qualifying PEG channels provided for its use. The supplemental funding support level is currently fixed at \$2,000,000 per G.S. §105-164.44I(b). The supplemental support funds received by Buncombe County must be allocated equally among each of the "PEG channels it certifies." See G.S. §105-164.44I(c).

Supplemental PEG fund distributions to BCTV and URTV since June 2010 have been as follows:

| Date | URTV | BCTV |
|------------|-----------------|-----------------|
| June 2010 | 48,074.15 | 48,074.15 |
| Sept. 2010 | 6,013.18 | 4,672.90 |
| Jan. 2011 | 3,007.54 | 4,347.82 |
| March 2011 | <u>4,310.35</u> | <u>4,310.34</u> |
| Total | 61,405.22 | 61,405.21 |

Current legislation sets the supplemental funding support level at \$4,000,000 per amendment to G.S. §105-164.44I(b) effective July 1, 2011. Accordingly, the quarterly distributions to certified PEG channels should increase contingent on the number of certifications and continued legislative authority.

Thank you, and should you have any questions please let me know.

cc: Wanda Greene
Donna Clark

