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To: Commissioners Cardenas and Hayward
From: TJ Jones, Executive Director
Subject: Budgetary Considerations for Remote Public Participation at Commission Meetings
Date: July 29, 2019

INTRODUCTION

This memorandum should be considered an addendum to the draft “Legal Considerations for Remote Participation at Commission Meetings” memorandum of July 26, 2019 (“Legal Memo”). The Legal Memo considers three scenarios for possible remote participation by members of the public at Commission meetings: “live,” “delayed,” and “delayed and aggregated.” Under a “live” participation scenario, the Commission would be able to receive the comment in real time. The cost of such a rubric is substantial – particularly if the live participation were to be in video form - and would increase significantly if the Commission seeks that the live participation be interactive (i.e., where the Commission would be able to follow up with questions for the participator, or otherwise engage in real-time conversation).

With “delayed” participation by the public, the Commission would be able to receive comments from the public in either video or text format during a meeting, but would not be able to engage in conversation or ask questions that could be answered during the Commission’s meeting. The delayed airing of the comments would provide an opportunity for staff to preview the comments to ensure that they are in compliance with previously established FPPC rules.¹

Under a “delayed and aggregated” system, comments would be received by FPPC staff, and then aggregated before being presented to the Commission in summary form. Staff would collect the comments and remarks during the meeting and, to the extent necessary and legally permissible, aggregate the comments for the Commission’s consideration. For example, if twenty people provided comment on a particular enforcement matter before the Commission, staff would be able to aggregate the opinions and inform the Commission how many commenters were in support of, or against, a proposed penalty.

Each of the above imposes different costs and technological challenges. This memo assumes that any public presentation of comments – whether video, audio, or text – would need to be presented and displayed at a Commission meeting in a manner that could be seen/heard by Commissioners and live attendees at a Commission meeting.²

¹ Currently the FPPC does not have any rules or policies governing public comment or participation at Commission meetings. As stated in the Legal Memo, reasonable rules regarding public commentary are within the authority of the Commission to promulgate. Prior to such promulgation, however, the editing or rejection of public comments presents potential constitutional hurdles discussed in the Legal Memo.

² The Commission may also wish to ensure that any public display also be replicated for purposes of the video broadcast of the meeting on YouTube, which has roughly a fifteen to twenty minute lag time from the live meeting. The video broadcast of the meeting itself is not subject to the strictures of Bagley-Keene or the First Amendment (i.e., it is just a video record of what transpires at the meeting, which itself is already subject to Bagley-Keene). This memo does not discuss any additional cost that may be associated with ensuring that the YouTube feed accurately and fully displays all comments that may be received from remote sources.

SUMMARY

Under any scenario, the FPPC would incur significant equipment costs as well as staff time and equipment maintenance costs. Equipment costs are estimated to be \$50,000 for any system that allows participation during the meeting by video or audio. Additional equipment costs would be incurred if such audio or video comments were to be reviewed prior to presentation to the Commission.

Current software that is licensed by the FPPC can handle many – but not all – of the functions necessary for remote participation by the public. In order to achieve full functionality – particularly for live, interactive participation, where the Commission can engage the participant in colloquy during a meeting, and can control who is speaking and for how long – the FPPC would need to purchase or license additional software. The IT department is currently working with its Webex vendor and potential sub vendors to determine the cost of purchasing/licensing this additional software. In addition, the FPPC will likely incur the cost of training personnel on the software.

ANALYSIS

1. “Live” Participation by the Public

The FPPC currently has a license to software (Cisco “Webex” software) that would enable “live” participation. However, live participation cannot be accomplished through the current video feed used by the Commission at its meetings, because of the lag time associated with the FPPC’s YouTube channel feed. Therefore, for true “real-time” participation by members of the public using Webex, staff would need to purchase audio-visual equipment. The estimated cost for such equipment (which would include: camera; computer controller; five monitors and attendant hardware for Commissioners; large mounted TV monitor), installation, and support is \$50,000. In addition, there would be recurring costs of maintenance, repair, and staff time to run the equipment. Even with state-of-the-art equipment, real-time capability would still be subject to the end-user’s internet connection speed, and the end-user’s access to a computer (or handheld device) with a camera and/or audio. If a public participant was providing comment using a slow internet connection, the comment would be necessarily delayed, irrespective of the equipment and software used by FPPC. This delay would be greater for video comments (because such comments would require the transport of significantly more digital information than text comments).

a. Interactive, “real-time” video, audio or text

Even assuming adequate internet speed of the end-user, real-time interactive video is not possible with Webex for more than one individual end-user at a time. Participants would have to attempt to “call-in” to the Commission meeting but, if another participant were to be addressing the Commission at the time, those participants would be unable to get through until the current commenter was done. Webex “Meeting” modality – like many video-conferencing platforms – has capacity to entertain a limited number of participants (20) in a virtual “meeting,” but the Commission would not be able to regulate any participant’s comments (i.e., the Commission would not be able to limit a person’s participation or prevent all participants from speaking at the same time). In order to moderate and regulate the participation (such that the Commission would be able to interact with one participant at a time) additional software would need to be purchased or licensed. The cost of such software is being investigated by the IT staff, and the FPPC’s current A/V vendor, but will likely exceed \$15,000. In addition, depending on the software, there may be additional costs associated with staff training, and compatibility with current software and equipment.

b. Non-interactive, “real-time” video, audio or text

Webex has the ability to provide real-time comments (video, audio, or text) through its “Event” modality. Neither Commission nor staff would be able to interact with the commenters, but the “Event” mode would allow the FPPC to regulate the video (and audio) feed, such that it could mute the microphone of a participant, and then activate the microphone of a different (albeit unknown) participant. This mode of Webex would also allow up to 10,000 participants to provide real-time text commentary (with a limitation of the characters used in the text). There would be no additional costs associated with this scenario.

2. Non-interactive, delayed-time video, audio or text

The above “real-time” scenario(s) can also be used for delayed presentation to the Commission. Obviously, with a delay, there is no option for any interaction, and the length of the delay would hinge upon the length and number of comments received. The delay function would be utilized by staff to ensure that comments can be truncated, edited or expunged as necessary and legally permissible before they are publicly presented to the Commission at the meeting.³ Under this scenario, the FPPC would incur the same costs as those for “live” comments. In addition, the FPPC would also need additional equipment (an additional monitor for staff preview of comments, along with video/audio editing software). These additional costs would likely not exceed \$5,000.

3. Non-interactive, delayed-time, aggregated summary of video, audio or text

Delayed and aggregated videos, audio or text would likely require expenditure of funds akin to the cost of using delayed-time video, audio or text (above). However, the FPPC would not incur the cost of A/V editing software (\$500 to \$1,000). In addition, if the aggregated comments were to be delivered to the Commission orally, the FPPC might be able to eliminate the cost of video monitors for the Commissioners, as well as the cost of a large mounted monitor for the public. Thus, depending on how aggregated comments were presented to the Commission, the total equipment costs associated with this option may be less than \$10,000.⁴

³ Legally, this function would need to be performed by a member of FPPC staff rather than a Commissioner. Commissioners are not legally able to preview or consider comments at a meeting unless they are shared with the public. See Gov. Code Sections 11125.1 (a) and (b).

⁴ According to the Legal Memo, the more that the FPPC is involved in summarizing or aggregating the comments, there is a higher likelihood of an allegation of constitutionally prohibited “viewpoint discrimination.”