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Introduction

We appreciate this opportunity to respond to the FCC's Public Notice on the Future of Media on behalf of the Alliance for Communications Democracy (ACD) regarding public, educational and government (PEG) access television. The Public Notice states, "The Future of Media project starts with the assumption that many of the challenges encountered in today's media environment will be addressed by the private for-profit and non-profit sectors, without government intervention." But history and present day facts suggest that another approach is called for.

The FCC currently has pending a Petition that is a clear illustration of market forces at work to the detriment of the public. The Petition, *ACM et al.*,¹ notes the segregation of PEG access channels by AT&T, the world's largest telecommunication company on the cable systems. If the FCC fails to rule in favor of those Petitions, PEG access channels will be effectively out of sight and out of mind for cable viewers, and the precedent will undoubtedly encourage other cable television providers to follow suit.

Ever since the Radio Act of 1927 established the commercial model to support broadcasting, the public interest has generally been poorly served in the absence of clear governmental intervention. We believe that there are certain essential services too important to the national civic health to be left to the will of the private sector and that the quality of news and information provided by media is one of them. The U.S. government currently spends approximately \$1.35 per person annually on non-commercial media, much less than most other industrialized nations.² PEG access is now one of the few non-commercial media outlets the average citizen will ever encounter. There are thousands of PEG access channels operating nationwide serving local populations, including minorities, youth, disabled, and disadvantaged. The sum total of this output greatly enriches the national marketplace of ideas upon which our Democratic system depends.

The Communications Act of 1934 established the goal of strengthening democracy through communication, a position repeatedly supported by the FCC. Other goals that have been explicitly supported by the FCC include the protection of free speech, independence, public interest, diversity, localism, and access to emergency and safety information. PEG access is in a unique position to address many of these goals when established to provide democratic access as part of the cable regulatory model. But the regulatory framework encompassing PEG has become seriously eroded and the funding and channels required for successful service to the public are being put at risk.

¹ ACD is a Petitioner in the Petition for Declaratory Ruling Regarding Public, Educational and Governmental ("PEG") Access Channels, MB Docket No. 09-13, CSR-8126, (*ACM et al.*)

² See *Changing Media: Public Interest Policies for the Digital Age*, www.FreePress.net/node/61301, accessed 3/7/10.

The first cable channel set aside for community use in the U.S. was established by the Jaycees – Junior Chamber of Commerce – in Dale City, VA in 1968. This pioneering effort ended after two years due to a lack of adequate funding and equipment.³

Unfortunately, this has been the pattern ever since. Following the 1984 Cable Act, when public access television was established in many cities, the primary factor that has prevented PEG access from consistently fulfilling its mission to serve the public has been a lack of financial and legislative support. As Linder states, “This common shortfall has had the effect of destabilizing the movement for public access television in many cities across the nation”⁴

When such support exists, PEG access television becomes more than a mere media outlet, it becomes the focal point for a remarkable variety of communications activities, what economic developers refer to as an “anchor institution,” an essential part of the communications infrastructure of local communities. PEG centers are evolving into community media centers, offering a wide range of services. Let us share just a few examples from coast to coast.

- Boston Neighborhood Network (bnntv.org), which is currently celebrating its 25th Anniversary, operates Boston's two public access cable television channels including a nightly Neighborhood Network News program staffed by three people with assistance from Boston University students. BNN recently opened the Beard Media Center, an LEED Silver certified facility providing state-of-the-art connectivity and interactivity with cable systems, satellite, web, and emerging platforms. Members have access to two television studios, digital field production and editing equipment, a multimedia lab, and a mobile production truck, as well as hands-on media training classes. Among the thousands of residents participating at BNN in 2009 were more than 900 young people who gained hands-on media experience.
- Grand Rapid Community Media Center in Grand Rapids, Michigan (grcmc.org) administers television, radio, IT services, media literacy tools and live theatre resources. Local residents have access to GRCMC’s production and PSA services, live streaming in addition to two citywide cable channels, space use, IT solutions exclusively for nonprofits including website design and hosting, database development, email and mailing lists, on-site computer consulting, installation and support along with personalized training and communications strategy services. More recently, GRCMC has launched *The Rapidian*, a hyper-local news source with stories by citizen journalists.
- MetroEast Community Media (metroeast.org), also celebrating its 25th anniversary in 2009, operates 8 public, education and government channels in the suburbs east of Portland Oregon. With over three hundred volunteers, MetroEast is the only electronic source for news and information about Portland’s east suburbs. Its new

³ Fuller, Linda K. *Community Television in the United States: A Sourcebook on Public, Educational, and Governmental access*, Westport, CT: Greenwood Press, 1994, p 145.

⁴ Linder, Laura R. *Public Access Television: America’s Electronic Soapbox*, Westport, CT: Praeger, 1999, p 51.

facility has become a community gathering spot and a meeting place for a variety of community groups. MetroEast provides training for and access to a full range of digital equipment including two studios, one with robotic cameras, field production equipment and edit suites. MetroEast also trains in the use of the Internet as a means of video distribution. In the fall of 2010, MetroEast will start broadcasting on KZME, a full-power, non-commercial radio station dedicated to local arts and culture and to Portland's thriving, but neglected, local music scene.

We feel it is time for the FCC to take a new look at PEG Access.

Distinguishing Principles of PEG Access

One of the questions posed in the Public Notice was, *Are there other ways to provide for the benefits from PEG channels in the digital age?* This implies that the provision of benefits is fundamentally driven by certain technologies, but the crucial issue as far as the public is concerned is utilization, not mechanics. Or, put another way, people care about results more than means. The more appropriate question would be, *How will the benefits provided by PEG channels be supported in the digital age?* In this section, we will discuss three principles that distinguish PEG access and make it an invaluable communication resource: localism, diversity, and democracy.

Localism

The principle that underlies PEG access is that residents of a community should have access to and control over a sufficient number of local television channels in order to create and share information, inspiration, and entertainment. This principle can only be upheld on a local level, and it is this localism that sets PEG access apart and provides ample justification for renewed and increased support for PEG access facilities on a comprehensive, national scale. Unfortunately, in recent years this idea seems to have lost urgency and/or has been eroded by a flood of misinformation, lobbying, and noncompliance by cable operators and phone companies.

In its comprehensive report, *Informing Communities: Sustaining Democracy in the Digital Age*, the bipartisan Knight Commission on Information Needs of Communities placed local communities at the center of its three fundamental objectives:

- maximizing the availability of relevant and credible information to communities;
- strengthening the capacity of individuals to engage with information; and
- promoting individual engagement with information and the public life of the community.⁵

Three distinct areas of service that comprise localism as embodied by PEG access are: responding to community needs; local control and transparency; and public participation through media and technological literacy.

⁵ Knight Commission on the Information Needs of Communities in a Democracy, *Informing Communities: Sustaining Democracy in the Digital Age*, Washington, D.C.: The Aspen Institute, October 2009.

Responding to community needs. Network coverage is dictated by the imperatives of the 24-hour news cycle and sensationalism. PEG access puts the emphasis on responding to community needs by connecting viewers to local resources and assistance, providing a persistent presence in the community. Examples:

- In Mount Prospect Illinois, when a wind wall came through town at 80-90 miles per hour wrecking havoc in minutes in 2007, the PEG station went into high gear. With 3,000 trees downed, power outages, and flooding, Mount Prospect Television (MPTV) provided assistance for a full month after the broadcast news had gone home. Residents received information from MPTV about getting trees and branches cleared, cleaning up flooded basements, getting assistance on insurance claims, and receiving emergency food assistance.
- Mexican American Legal Defense & Educational Fund (MALDEF) saw the use of Chicago Access Network Television (CAN TV) as one of its top communications priorities in encouraging local participation in the 2010 Census. On its live call-in program, *Todos Contamos*, MALDEF has been able to provide information tailored to the Latino Community, which has historically been under-represented in census data. According to Elisa Alfonso of MALDEF, “CAN TV provides us with a unique platform that no other broadcast medium gives us. Through the interactive medium of TV, we are able to speak directly with our audience, answering their questions and addressing their misconceptions.”
- In Portland, Oregon, local resident Nemesio Guzman had produced 52 programs within a few years of receiving training from Portland Community Media. His program, *Comunidad Unida*, has covered topics such as: adoption, autism, banks, community action, domestic violence, healthy living, immigration law, mental health, nutrition, parenting, public health, river safety, sex abuse, suicide prevention, volunteering, women’s shelters and youth.

For most TV viewers, network and syndicated shows dominate the TV schedule. Even the “news hole” is often filled with stories generated from afar. Because national broadcasting organizations have a different set of concerns and priorities, dictated by geography, politics, and economics, their domination of local media content cannot help but give a false, distorted view of life as it is lived in most locales. This has the effect of corporatizing and homogenizing the form and content of programming, and prevents local residents from independently determining which resources will be most useful to them in their daily lives. A 2008 study conducted by Fordham University found a “negative relationship between ownership by one of the big four broadcast networks and the provision of local public affairs programming.”⁶

At the March 4, 2010 FCC workshop, “Serving the Public Interest in the Digital Era,” National Association of Broadcasters General Counsel Jane Mago, said that the core obligation of NAB and its members is to provide programming, and not only news, which

⁶ Yan, Michael and Napoli, Philip M. “Market Competition, Station Ownership, and Local News and Public Affairs Programming on Local Broadcast Television,” 2008, http://fordham.bepress.com/mcgannon_working_papers/2.

serves its public. But panelist Andrew Schwarzman, Media Access Project President, said that some stations do absolutely nothing local.⁷ Despite decreases over time in local programming on commercial television, studies conducted in PEG communities across the country show that public support for local programming remains very strong. 74% of cable subscribers said that local programming is important, and nearly 60% said that \$1 or more a month should be set aside from cable bills to support local community programming.⁸

Unprecedented changes in the world of print journalism also point to the unique role of PEG access. Bob McChesney and John Nichols, among others, have written extensively about the dangers posed by the loss of newspapers, in particular, and media consolidation, in general.⁹ A number of commentators have put forth the idea of developing a public funding mechanism for journalism and public media. The PEG model provides an existing infrastructure for such a program.

Local control and transparency. Maximizing community involvement is built in to the process envisioned for the establishment of PEG access. In local cable franchising, a community needs assessment is a part of the creation of PEG facilities, with input gathered from all sectors of the community. This process can easily become compromised when politics comes into play, or in situations where the cable or telephone company advance “astroturf” representations of the public while striving to shut down legitimate public involvement, as evidenced in recent state franchise deliberations.

Several types of governance have been applied to PEG access,¹⁰ but by far the most successful model is the one where a local, independent non-profit organization is created for the express purpose of providing the services described in the franchise agreement. The primary reason for the effectiveness of this model is accountability to the public, which comes as the result of five specific conditions:

- Accessibility. The operators of non-profit PEG centers are accessible to users (producers) and answerable to viewers (residents).
- Oversight. PEG access is governed by a community-based board of directors responsible for the operation of the facility.
- Independence. The Cable Act of 1984 prohibits interference with PEG content by cable franchisees, and the First Amendment prohibits interference in constitutionally protected speech by local franchising authorities.¹¹

⁷ Broadcasting & Cable by John Eggerton, 3/4/10, “Broadcasters: We Don’t Need Government to Tell Us How to Serve Our Public.”

⁸ The Alliance for Communications Democracy, “Aggregate Data on Cable Viewership,” April 2010, data gathered by Group W Communications LLC. Attachment A.

⁹ See McChesney, Robert W. and Nichols, John. *The Death and Life of American Journalism: The Media Revolution that Will Begin the World Again*, Philadelphia, PA: Perseus/Nation Books, 2010.

¹⁰ This section primarily refers to public access television, not to channels separately administered by educational institutions or government.

¹¹ In *Joe Ed Bunton v. City of Palestine*, for example, the City dropped the public access channel during renewal negotiations because it was upset by Bunton’s programming. The court denied a motion to dismiss and the city responded by settling with Bunton and reinstating its channel.

- Dedication. Public access attracts dedicated workers who believe in the mission and are trained to encourage public involvement by providing whatever support clients need.¹²
- Trust. Lastly, the level of public trust in non-profit organizations is generally much higher than with governmental or corporate institutions, which is especially important when residents are exercising their First Amendment freedoms. This trust also extends to the non-profit organizations and other producers who rely on public access television to get their messages out.

The more local and independent the PEG model, the greater the chance that a wide diversity of speakers will be involved. PEG access must be given the widest possible latitude to facilitate freedom of expression, entertain a broad spectrum of viewpoints, and apply community standards when the inevitable controversies arise.

The people who work at public access centers are not editors or gatekeepers, but facilitators who help local residents to develop and distribute their messages. Ironically, one of the issues that confronted Public access television in the past might be described as one of “too much democracy,” at least for some. We are referring to the initial concerns expressed in many communities about some of the potentially offensive programming that appeared on some public access channels, especially in decades past. By 1999, however, controversial programming comprised “one percent or less of all public access programming.”¹³ A decade later, few PEG operations report significant problems in this area.

The potential for PEG channels to help advance goals for greater transparency is most evident at the local level. Democracy is not just a political system, but an activity that takes place in thousands of meetings of city councils, aldermen, commissioners, planning boards, and other civic bodies. Only a small percentage of residents are able to attend these meetings in person, but PEG access allows a far greater number to monitor the activities of their government(s). In addition to cablecasting unfiltered coverage of local meetings, many PEG access channels facilitate civic engagement by serving as a megaphone for information regarding voter registration drives, candidates of every stripe, and all the various rights and responsibilities of citizenship.

The transparency afforded by PEG station coverage of a wide range of government meetings enhances civic life. But the local franchising structure raises questions about assigning the power to local governments to determine whether to allow meeting coverage. Problems come into play when government channels refuse to have meeting coverage, show only select meetings, or edit meetings to prevent full disclosure of the proceedings. This structural problem needs to be addressed if local residents are to be assured of greater transparency in government.

¹² This dedication is one reason that public access television is able to accomplish big things with small budgets. Even the largest public access operations run on a budget that is a fraction of the budgets of PBS or commercial television stations.

¹³ Linder, p 45.

There are many reasons for the distrust of government expressed by so many Americans, but civic ignorance may be the most basic cause. Annual surveys conducted by the Pew Research Center for the People & the Press reveal that most Americans simply do not know what government does or how it benefits them. In a test of civic knowledge, for example, fully half of the respondents received failing grades. PEG access represents one of the few tools at the disposal of local residents *and* governments to close this ignorance gap. While mainstream coverage of politics is dominated by grandstanding, sound bites, and sensational stories of corruption and infidelity, PEG access provides an unfiltered view of government in action.

In a number of sizable cities, including Salem, Oregon's state capitol, PEG access provides the *only* local television. But even in the media capital of New York City, there are important issues and events that would be uncovered were it not for PEG access. It was Manhattan Neighborhood Network, for example, that took the initiative to cover and cablecast political debates sponsored by the League of Women Voters.

Public participation through media and technological literacy. The role of PEG access in developing technological and media literacy has never been more important than today. PEG centers provide constructive outlets for community youth to learn media skills. Seniors actively create programming on a range of issues. Nonprofits are given an outlet to reach clients in need of assistance. PEG channels provide a platform for civic debate to resolve local conflicts. And during local elections, PEG channels provide opportunities for candidates to address the public directly and fully, without being limited to a 30-second sound bite. Thousands of hours of new, original content flow through PEG channels every day throughout the country, bringing local information into the home that would not otherwise be seen. PEG channels welcome community members, politicians, preachers, experts, educators, and artists. Participants aren't screened and selected by management or advertising interests; they participate because it's their community and their channels.¹⁴

PEG centers provide an important resource for increasing the digital literacy of local residents as they learn video production skills or create messaging for distribution using a multi-platform approach. Media literacy training is offered at many PEG centers, helping local residents to deconstruct their assumptions about video and television, instead of simply imitating commercial models. As a result, participants become more educated consumers of media, giving them an awareness of the formal features of television and enabling them to deconstruct and analyze the content and form presented in other media.

PEG Centers are evolving into community media centers that serve as anchor institutions in the community, enabling people to gain skills needed to more fully participate in the digital age. A significant benefit of PEG centers is that people gather together in classes, volunteer on each other's projects, and connect with communities of interest in ways that cross class, race, and ideological divides. People come together to learn how to become effective communicators, a key component in the media age.

¹⁴ Testimony of Barbara Popovic, CAN TV Executive Director on behalf of Alliance for Community Media and Alliance for Communications Democracy before the U.S. House Appropriations Committee Subcommittee on Financial Services and General Government on September 17, 2008.

Increasingly, as local residents and groups learn to create content through PEG centers, they are also assisted to repurpose that content for placement on other platforms in addition to the cablecast on a PEG channel. With the proliferation of new media in the web 2.0 environment, many PEG centers are in a position to help local residents and nonprofits make strategic use of multiple media tools to reach target audiences and realize communications goals. People may take the step of creating content, but often lack the experience to navigate the opportunities for multiplying the reach of that content through a multi-platform environment. Despite challenges posed by resource constraints and frequent legislative challenges, PEG centers are working toward building the internal capacity to help people take advantage of multiple platforms such as social networking, blip.tv and YouTube, RSS feeds and other methods for extending the reach of their content.

- In Kalamazoo, Michigan, The Public Media Network (publicmedianet.org) teaches vocational courses in radio broadcasting and digital video production to high school students throughout Kalamazoo County through an accredited program certified by the State of Michigan. The curriculum includes conversion of radio to pod casts and video via web applications. This year, PMN will be honored by the Kalamazoo Regional Educational Support Agency as the Outstanding Vocational Instructor of the year.
- Manhattan Neighborhood Network (mnn.org) is one of the largest media education centers in New York City, training 12,000 people in the last five years. Residents participate in seminars on digital storytelling, oral histories, Internet video distribution tools, video archiving, social networking 2.0 and videoblogging for non-profit organizations and independent producers. MNN's Internet video distribution seminar is designed to give producers the tools and information they need to expand their reach and audience through innovative on-line media distribution strategies, from videoblogging to video sharing websites to social networking sites.
- Olelo Community Television in Honolulu, Hawaii (olelo.org) has centers throughout the island of Oahu with an established presence in every school district. Programming created through those classes is cablecast as well as being made available on the Internet. Summer media programs in high risk communities take a vocational approach as well as encouraging civic engagement, and fostering personal development through an understanding and appreciation of the host culture in Hawaii.

Diversity

One of the goals established by the 1984 Cable Act was to encourage “the widest possible diversity of information sources and services to the public.” While a considerable amount of attention has been paid to the lack of minority ownership of media outlets, it is the larger issue of minority participation and the reflection of minority viewpoints that PEG access operations support every day. By virtue of geography, philosophy, and policy, PEG encourages the greatest possible inclusiveness. Individuals and groups who lack the

recognition, resources, and/or institutional supports to express themselves in other venues, are not only given channel time with PEG, but are provided with the necessary training and technical assistance to maximize their outreach.

While the demographic makeup of PEG access programming reflects the community it serves, participation cuts across race, class, religion and political ideology. In localities with diverse populations, minority groups whose needs are not met through mainstream media outlets have consistently been heavy users of PEG access services. As Ross and Spitzer state, public access television “fosters greater cultural participation by offering cultural minorities the opportunity to represent themselves the way they choose to be represented, rather than through the eyes of commercial stations . . .”¹⁵

- In Tampa Bay, Florida, 70% of content providers/community producers at Tampa Bay Community Network (TBCN) belong to minority groups and range in age from teenagers to seniors.
- In Boston, where more than a quarter of the population is foreign-born,¹⁶ BNN’s *In Focus Youth Media* program has provided training for high school students of every cultural heritage, including Nigerian, Chinese, Filipino, Vietnamese, Trinidadian, and Guatemalan. The local Haitian community has been producing their own program, *Telekreyol*, for 22 years, and it has been distributed to other cities with significant Haitian populations. With the recent upheavals in Haiti, this program has served as a crucial source of reliable information, contributing to the effectiveness of national relief efforts.
- In New York City, where 170 languages are spoken, residents can find important information in their native language on the city’s public access channels. BronxNet has programming by and about residents from Puerto Rico, Mexico, Honduras, Jamaica, the Dominican Republic, Guyana, Ghana, Albania, Italy, Ireland, Thailand and many more countries. In addition to Spanish and English, BronxNet producers share programs in Thai, Albanian, Hindi and Garifuna, a Central American language rooted in African culture. On Manhattan Neighborhood Network channels, Arabic, Hebrew, Turkish, Portuguese, Japanese, Korean and American Sign Language are used to communicate a broad range of issues. Queens Public Television (QPT) calls itself the most diverse television for the most diverse place on earth, programming in Russian, Greek, Romanian, French, and Urdu. The BCAT TV Network in Brooklyn programs in Armenian, German, several Chinese dialects, West Indian Patois and Creole from a broad spectrum of cultures.
- The Youth Channel is an outlet governed and programmed by youth that was created by a partnership of public access centers in New York, Denver, Atlanta, Seattle, and Grand Rapids, Michigan. This program is designed to “build confidence, establish role models, inform, educate and entertain while reinforcing

¹⁵ Ross, Jesikah M. and Spitzer, J. Aaron. "Public access Television: The Message, The Medium, & The Movement," *Art Papers*, Vol. 18, No. 3, May 1994, p 3.

¹⁶ 2000 Census data.

the fact that youth are capable of creating positive initiatives in their communities and the entire country.”¹⁷

Democracy

The German sociologist Jürgen Habermas defined the “public sphere” as a site where “access is guaranteed to all citizens” and where they may “confer in an unrestricted fashion”¹⁸ going on to note that, if there is a public sphere in contemporary society, it is to be found in the mass media. Sparks goes on to pose three questions that can be used to measure the performance of media: “To what extent are they open to all citizens?”, “To what extent is debate free and uncensored?”, and “To what extent are citizens participants in, rather than spectators at, the debate?”¹⁹ To these we would add a fourth question, “To what extent is information shared that is useful to citizens, personally, socially, and/or politically? If these questions constitute a test of the efficacy of media, no outlet gets higher grades than PEG access television.

As noted by the bipartisan Knight Commission on Information Needs of Communities, a healthy democratic community is an informed community. Among the conditions necessary for this status cited in the Commission’s report is that “People have convenient access to both civic and life-enhancing information, without regard to income or social status.”²⁰ In reference to PEG access television, the term “access” has two very important meanings. The first refers to the availability of PEG programming to all residents. The second refers to access to the tools and training necessary to become *creators*, not just consumers of media. As Price notes, “Gaining access has come to mean not mere representation, but assurance of fair representation among those who control the electronic media, preventing monopolies of the narrative”²¹

The Commission used the term “democratic shortfall” to describe the failure of commercial television to meet the civic needs of average citizens. We take this term literally. Not only are some people underserved by digital or other media, either because of lack of access, training, time, or choice, but the prerequisite elements of the democratic process are often undermined, rather than supported, by commercial media. As Natalie Fenton put it, “We are witnessing the privatization of access to information and culture, and thus the shrinking of public space in communications, that has serious implications for the future and the existence of civil society.”²²

At a time when the entire enterprise of news-gathering and journalism is being threatened, it behooves us to take stock of the available media resources that might be utilized to fulfill at least some of these functions. We believe that there is a very real threat to our

¹⁷ Grand Rapids TV (GRTV) web site.

¹⁸ Habermas, Jürgen. “The Public Sphere,” *New German Critique*, 1974, Vol. 3, No. 1, p 14.

¹⁹ Sparks, Colin. “The Global, The Local, and the Public Sphere,” in Allen, Robert C. and Hill, Annette, *The Television Studies Reader*, London: Routledge, 2004, p 140.

²⁰ Knight Commission on the Information Needs of Communities in a Democracy, *Informing Communities: Sustaining Democracy in the Digital Age*, Washington, D.C.: The Aspen Institute, October 2009, p xiv.

²¹ Price, Monroe E. *Television: The Public Sphere and National Identity* Oxford, GB: Clarendon Press., 1995, p 194-195.

²² Fenton, Natalie. “Another World is Possible?” *Global Media and Communication*, 2006, Vol. 2, p 356.

democratic institutions and way of life if (a) there is not a sufficiently broad range of opinions expressed in the media, and (b) there is no practical means by which the average citizen can participate in the public dialogue. In a saturated media environment dominated by commercial messages, PEG access television is one of the few media platforms that operates according to democratic principles.

The State of PEG Access Television

To review the state of public access television, we will look primarily at three significant issues: regulation, financing, and competition. In the process of addressing these issues, we will provide a number of examples that (1) provide empirical evidence supporting the PEG access model, (2) demonstrate outcomes achieved when PEG access is supported financially and legislatively, and (3) respond to questions posed in the Public Notice.

Regulation

Federal law states that “a franchising authority *may* establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational or governmental use...”²³ It is the equivocation in the word “may” that has contributed to the inconsistency and instability in the PEG access franchising process from its inception. Before widespread consolidation of the cable television industry, many local cable and telephone companies negotiated contracts and provided services in good faith, but today few cable and phone companies provide support unless it is made mandatory by government. In fact, the industry commits significant resources to lobbying efforts to *minimize* regulations, and argue that regulations hinder competition, despite all evidence to the contrary. As a consequence, many local and state governments have reduced support for public access.

Cities collect a five percent franchise fee, which in many instances provides no funding for public access channels, despite healthy growth in cable revenues.²⁴ In some cases, cities also collect a significant share of the PEG fee.

- In Hillsborough County, FL, the County dropped funding of Speak Up Tampa Bay, the public access station, but maintained funding for government and education channels.
- In Albuquerque, New Mexico, Quote, Unquote, the public access operation, competes directly with City departments for capital money and City employees make the funding decisions. In 2009, public access received \$65,000 out of a total expenditure of approximately \$1.2 million in PEG funds received by the City.

²³ Sec. 611 of 47 U.S.C. 531.

²⁴ The cable industry reported total revenues of over \$90 billion in 2009. Average per-subscriber revenues have increased roughly \$4 *per month every year* from 2005 to 2009. While there has been a decrease in the number of cable subscribers (“basic video customers”), rate hikes have more than compensated for this loss of revenue. The overall annual per-subscriber growth rate for “residential video revenue” from 1996 to 2009 stands at a very healthy 6%. When you include internet and phone customers, the rate goes up to 10% annually. Data accessed from the National Cable and Telecommunications Association (NCTA) website <http://www.ncta.com> 4/13/10, compiled by The Buske Group.

- In Dallas, Texas, the public access system was operated by the cable company in the early 1980's with an annual budget of \$1.5 million. The city took over funding of PEG in 2000 and in 2001 allocated \$700,000 to Dallas iMedia. In 2005, the City reduced the allocation to \$543,000, by 2007 it was further reduced to \$300,000 and in 2008 it was down to \$246,000, which is less than one-third of iMedia's annual operating budget. By 2009, the City had cut the budget entirely for Dallas iMedia Network, which was subsequently forced to shut down operations.²⁵

Constitutional issues are raised when cable revenues intended to benefit the public are used predominantly or exclusively for programming by local governments.²⁶ Even in ordinances that prevent the local government from intervening in the content of a PEG channel, the control of the purse strings can have the affect of silencing the public. It is up to the federal government to uphold the principles behind the establishment of PEG access television by issuing clear guidelines for local governments in the franchising process that assure that government speakers won't displace the public.

A regulatory framework that has been initiated in recent years is the statewide franchise. Since 2005, state cable franchising laws have passed in 19 states.²⁷ But the very idea of franchising at the state level is antithetical to the principle of localism that is fundamental to PEG access. In fact, the statewide franchising model might more truthfully be described as "disfranchising" in the sense that local residents are deprived of a voice in the decision-making process.

In the FCC's Public Notice, the question is posed, *Does statewide franchising change the number and composition of PEG channels? Does it serve to promote the intended benefits from PEG channels or undermine them?* The effect of these laws in many states has been a reduction in the number, accessibility, quality and functionality of PEG channels; cutbacks in PEG services and facilities; a loss or reduction in public cable drops to schools, libraries and other public centers; a loss or reduction in institutional networks; an increase in costs to provide PEG services; and a weakening of regulatory oversight and enforcement.²⁸ In a number of states, rigid non-repeat programming requirements are applied to PEG channels. If a community cannot meet the imposed standard, the channels are taken back by the franchise holder. Notably, commercial channels are not held to this standard. The most damaging impact of state franchising has been the reduction of financial support for PEG access services. There is no case we have found in which a state

²⁵ http://blogs.dallasobserver.com/unfairpark/2009/10/cable_access_imedia_goes_dark.php

²⁶ In *Turner v FCC* the majority observed: "Assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment." 114 S.Ct. 2445, 2470 (1994). Indeed, "it has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'" James Horwood, "Public, Educational, and Governmental Access on Cable Television: A Model to Assure Reasonable Access to the Information Superhighway for All People in Fulfillment of the First Amendment Guarantee of Free Speech," 25 Seton Hall Law Review 1413, 1442 (1994-1995).

²⁷ TeleCommUnity: State Cable Franchise Laws at a Glance (as of 2/1/2010).

²⁸ "Assessing the Damage: Survey Shows that State Video Franchise Laws Bring No Rate Relief While Harming Public Benefits," Alliance for Community Media, May 2008. <http://www.ourchannels.org/wp-content/uploads/2008/07/harm-survey-report-final.pdf> accessed 3/30/10

franchise agreement was supported by the local community, PEG operators, producers, or viewers; the impetus has come entirely from phone companies and cable companies.

Dramatic examples of what can happen when responsibility for PEG franchising rests with the state can be found in Indiana, Ohio, Georgia, California, and Florida.

- In Indiana, state law (HB 1279) has been interpreted by Comcast to mean that they are not required to provide production or playback facilities for PEG access. By the end of 2007, Comcast had stopped providing services in at least eight cities.²⁹ The company has also failed to deliver the capital money for equipment required by HB 1279, affecting many cities including Bloomington, Indianapolis, and Fort Wayne. Perhaps most unfairly, the Indiana Utility Regulatory Commission, which is responsible for administering HB 1279, has declined to arbitrate issues between municipalities and cable TV providers, leaving local governments and PEG access centers with added fiscal burdens, including legal fees if necessary.
- In Ohio, no later than January 1, 2012, community service fees funding PEG access that are above and beyond the franchise fee are done away with as a matter of law. Similar sunset laws apply in Florida, Iowa, Georgia, Ohio, and Wisconsin. No PEG funding has been allocated under statewide franchises in Kansas, Missouri, and South Carolina³⁰
- Under Georgia state law, a PEG channel can be taken back if it doesn't have 9 hours each calendar day of non-repeat programs. The non-repeat programming requirement has shown up in states where AT&T has backed the introduction of state laws, and can also be found in cable refranchising negotiations. So while commercial channels can regularly repeat old movies, commercials, sitcoms and reality shows, PEG programs on job and training opportunities, the mortgage crises, health concerns, or educational resources can only play once or put a PEG channel at risk.
- In California, at least 45 PEG access centers have closed down due to cable company responses to the state's Digital Infrastructure and Video Competition Act (DIVCA). In San Francisco, the long-running PEG Access operation (Access San Francisco) saw its funding severely cut back and essentially replaced by another organization that has significantly reduced services and increased user fees.
- After passage of Florida state law in 2007, Tampa Educational Cable Consortium (TECC) lost \$500,000 in funding, or 60% of its annual budget. The public access channel, Tampa Bay Community Network, lost a third of its funding. TECC has offered programs on The Education Channel and The Explorer Channel for 21 years. Original programming such as *Mathematics Homework Hotline* reached 2,000 students each year with 25,000 annually downloading the web tutorials. *The Mini-Med School* program provides accurate and timely information to adults about

²⁹ South Bend, Hammond, Portage, Mishawaka, Valparaiso, Plymouth, Goshen, and Elkhart are among the cities affected.

³⁰ TeleCommUnity, *ibid.*

pressing medical concerns including the 12-part series, *Taking Control of Cancer*, which was seen by 28% of the audience, or 31,000 households. After passage of Florida state law in 2007, both educational channels were moved from Channels 18 and 21 to Channels 614 and 620, which required a digital box at an additional cost to the subscriber. While previous surveys had shown that 41% of the 285,000 subscribers in Hillsborough County watched the Education Channel, many people are now unable to access or find the channel

AT&T, the world's largest telecommunications company, has been the leading force behind many statewide franchising efforts as it has introduced its U-verse cable television product. Here is a summary of the negative effects felt in several cities where AT&T has introduced U-verse:

- PEG channels are difficult to find and use, and can only be accessed through a complicated series of menus and submenus;
- PEG channels and programs do not appear on program guides and listings;
- viewers are unable to surf easily between PEG and commercial channels;
- the audio and picture quality is inferior;
- SAP capability for second language translation is not available; and
- programmed recording devices cannot be used to record programs.

AT&T's U-verse singles out PEG channels for discriminatory treatment. If PEG channels are to serve as an open public forum, access needs to be available without being encumbered by sub par quality and functionality, constraints that are inexcusable in an age of technical advancement and innovation.³¹

Congressional Research Service's report on PEG access states that AT&T "has chosen not to make PEG programming available to subscribers in the same fashion that it makes commercial programming available. Instead, it treats PEG content the same way it treats Internet traffic." The report also discussed cable industry practices in relation to the transition from analog to digital cable channels, "... the movement of PEG channels from preferred, low-numbered, channel positions to high-numbered positions (for example, in the 200s or 900s) that are not near other channels — what PEG advocates have come to call "channel slamming" — highlights the concerns that many PEG advocates have that PEG programming is being discriminated against relative to commercial programming".³²

In communities surveyed as part of PEG studies compiled for this filing, people were asked about their viewing habits. Responses indicate that as channel numbers increase into upper tier numbers, surfing and viewing behavior decreases.³³ In short, channel location matters.

³¹ Petition for Declaratory Ruling Regarding Public, Educational and Governmental ("PEG") Access Channels, MB Docket No. 09-13, CSR-8126, (*ACM et al.*)

³² *Congressional Research Service report, "Public, Educational, and Governmental (PEG) Access Cable Television Channels: Issues for Congress", September 5, 2008, CRS-8-12.*

³³ ACD, *ibid.* Attachment A.

Financing

Unfortunately, for every PEG access success story there is a PEG outlet under threat. The problems outlined here argue for strengthening the regulatory framework that supports PEG access. PEG access operations cannot be expected to meaningfully serve the public unless there is sustainable funding. Under many state franchising agreements, funding streams for PEG access have dried up altogether.

In addition to allowing some local governments to avoid supporting PEG access, insufficient clarity in the federal framework creates an unsustainable financial situation. Even when local franchising authorities do require cable operators to provide channel capacity, if that local authority fails to provide operating support from some percentage of the franchise fee, only minimal capital funds beyond the franchise fee may apply to PEG. In most cases adequate operating expenses are not included in PEG budgets.

Two examples from North Carolina, one statewide and one local, are typical. First, statewide PEG budgets were established on the basis of the total number of channels in the state, but even state officials learned that their calculations were wrong – the number of channels was actually *three times* higher – no adjustment was made, resulted in a budget catastrophe for many North Carolina PEG centers.³⁴ At the local level, the City of Greensboro decided (as many local governments have done) to funnel all the proceeds from the franchise fee into its general fund. Allocations to the public, education, and government channels are made independently and represent a small percentage of the franchise fee income. Although usage of the public access channel (GCTV, Greensboro Community Television) has been consistently robust, the operation lacks the staffing and resources to maximize its impact. The Education Channel in Greensboro is grossly underutilized, with programming generally consisting of little more than a scrolling bulletin board.

The current situation in Tucson, Arizona is all too common, illustrating what is put at risk when cities don't meet their obligations to support PEG access television. Access Tucson was recently forced to cease operations for a month (from February 10 to March 9, 2010) as a result of a 100% funding cut by the City of Tucson. Programming was still available, but there were no new shows because no cameras, microphones, or lights could be checked out. 108 shows did not go live. No editing or studio production time was provided. No community affairs programming was produced. 158 people were denied training. Several youth programs and eight school tours were canceled. Planned coverage of local events such as the Rodeo Parade and the Tucson Urban League Gala with CNN commentator Roland Martin were cancelled. And there was no free Internet access for the public. Even after the City Council voted to restore some funding, Access Tucson has been forced to cut its staff in half, limit production services to four days a week, and shut down again for the month of June.

³⁴ See "Durham to Pay for Public Access TV," *Raleigh News & Observer*, 3/4/08, modified 9/22/09, www.newsobserver.com/2008/03/04/83162/durham-to-pay-for-public-access.html?storylink=misearch

Competition, The Internet, and Economic Impact

Competition is rarely a negative issue for public access operators. The overlap of services between PEG access and other media is minimal. Most often, PEG access not only encourages citizens to avail themselves of whatever platforms are available to them, but will facilitate ways in which content created at PEG centers can be repurposed and uploaded to the Internet or shared with other outlets.

While the argument has been made (often by those with a financial stake) that widespread access to Web-based communications has rendered local television channels obsolete, the exact opposite is true. Not only is PEG access not eclipsed by the Internet, it is uniquely positioned to help residents to extend content created through PEG facilities using social media and Web-based resources. The move into digital technology is underway and PEG centers stream live video, upload programming via video-serving sites like blip.tv and YouTube, link to videos through social networking sites, use RSS syndication, I-Tunes distribution and other means to complement their video channels and to open various possibilities for post-cablecast impact. A few examples:

- In Chicago, Illinois, Chicago Access Network Television (cantv.org), developed software to aggregate RSS feeds from community-based news sites for telecast to Chicago cable viewers. News headlines and story synopses automatically appear on CAN TV27 as stories are posted online during a 24 hour news cycle. This service is designed to extend the reach of hyper-local Internet journalism, raise public awareness of available community news resources, and encourage people to integrate use of those resources into their daily lives.
- Cambridge Community Television (cctvcambridge.org) in Cambridge, MA is using Google Mapping APIs to provide residents with new ways to experience public access television programs, and their neighborhoods, using virtual media tools. CCTV's Mediamap (cctvcambridge.org/mediamap) gives residents the ability to geotag and share their video, audio, text, and photos, extending CCTV's community television channels online and encouraging people to participate in the city's local culture and civic life.
- Community media centers are major repositories for community history. In Burlington, Vermont the CCTV Center for Media & Democracy (cctv.org) created a web hub that enables the public to search its entire archives (16,000 programs and 8000 pieces of media) dating back to 1984. CCTV also responded to viewer requests for access to government meetings by posting each meeting online (channel17.org) and creating "clickable meeting agendas" for ease of use so the door to local government stays open, and residents stay informed.
- Access Humboldt in Eureka, California has been developing a Community Media Archive online collection to host thousands of diverse local programs created through PEG channels (archive.org/details/community_media). The system uses web-friendly formats to encourage participation. Once programming has been

submitted, it can be downloaded at MPEG2 broadcast quality or viewed online in an embedded flash video player.

It is interesting to note that “neutrality,” which has become a contentious issue in regard to the Internet, with a sizable movement being galvanized to maintain a level playing field for all Web sites and Internet technologies, is already part and parcel of the design of PEG access television. Public access offers direct participation with little or no financial threshold to encourage participation by every sector or class within the community.

A multi-platform environment offers benefits that have clear implications for public information and education. There is a clear trend toward simultaneous Internet and television use. In a 2009 report, the Nielsen Company found that “57% of TV viewers in the U.S. who have Internet access use both media at the same time at least once a month.” But the trend goes deeper. As Nielsen spokesman Gary Holmes put it, “One medium can be used to reinforce the other.”³⁵ The fact is that the clear distinctions that have historically existed between media platforms are rapidly being broken down. In the past, among the most important elements in mass communication were distribution and marketing. In a media landscape where convergence is the rule rather than the exception, the great public need is going to be in the development of content, a great strength of PEG access.

For example, the non-profit service organization SCORE CHICAGO created a live call-in program on Chicago Access Network Television (CAN TV) aimed at counseling and mentoring small business owners and entrepreneurs. In addition to the information shared with cable viewers, the shows were uploaded to the Internet and linked to social networking sites. Crain’s Chicago Business blog carried a SCORE Chicago question of the week that tied back into the weekly program. After a year of this integrated digital marketing effort, SCORE Chicago reported that its workshop revenue was up 80% over the same period the previous year and client visits were up over 30%. Mark Goodman of SCORE Chicago said, “As video becomes pervasive on the Internet, having a resource like CAN TV is essential.” This underscores the fact that regardless of the ultimate outlet, the service provided by PEG access in helping non-profit organizations and residents to develop content is essential.

Industry attempts to marginalize PEG channel placement or suggestions that the Internet should suffice as the primary platform for PEG content ignore what is going on in the commercial world. Comcast is not abandoning its controlled bandwidth, and AT&T, a common carrier, is not skipping controlled bandwidth in favor of an all-Internet platform. What each is doing is preserving the choicest bandwidth for its own use and then placing content on the Internet to maximize the availability and reuse of that information. If that approach makes sense for commercial programming, then it certainly makes sense for programming about public health, education, economic development, civic engagement, and other community based programming initiatives emanating from PEG channels.

³⁵ Reuters 9/29/09.

It is important to note that 40% of U.S. households do not have high-speed Internet access at home³⁶ with cost frequently cited as the primary obstacle. Studies conducted in PEG communities around the country show that subscribers earning less than \$40,000 in annual household income were significantly less likely to access the Internet. Those studies also show that people over 65 are half as likely to access the Internet as people under 30.³⁷ In Chicago, the City's Digital Excellence study released in 2009 noted that "39% of Chicagoans lack the broadband connections required to fully participate in the digital revolution." The study notes that, "Chicagoans who are statistically more likely to be offline or less-connected are older, Latino, African-American, low-income and less-educated."³⁸ As the FCC has stated, "The digital age is creating an information and communications renaissance. But it is not serving all Americans and their local communities equally."³⁹

According to the Nielsen Company's quarterly "Three Screens Report," almost 99% of the video watched in the U.S. is still done on television,⁴⁰ and "television remains the dominant news source for the public, with 71% saying they get most of their national and international news from television," according to a 2009 study from the Pew Research Center for People & the Press.⁴¹

As the Internet becomes more widely used, it is important to remember that the medium has certain weaknesses as an information source. One of the defining features of the Internet is its "everywhereness" and "nowhereness." Information is presented in an endless series of fragmented links with little structure or context. While the Internet has enabled communications of all kinds, it is by design and function global, not local. By contrast, PEG access programming is defined by a sense of place. There is never any question as to the provenance of any given show: it is the product of a local producer, a neighbor. The benefit of this local emphasis has been recognized by the courts. In *Prometheus Radio Project v. Federal Communications Commission*, the court concluded that "the commission had erred in including the Internet as a distinct information source for the purpose of calculating its diversity index because the Internet, unlike broadcast television and other traditional media, does not yet represent a significant source of local news and information."⁴²

The area in which the impact of PEG access has been very constructive is in the support of non-profit organizations. According to the Independent Sector, the non-profit sector has assets of accounts for approximately 5% of GDP and over 8% of wages paid in the

³⁶ Associated Press, 2/16/10, by Joelle Tessler, "New data: 40% in U.S. lack home broadband," usatoday.com.

³⁷ The Alliance for Communications Democracy, *ibid*, Attachment A.

³⁸ The report was commissioned by the City of Chicago, the MacArthur Foundation, and the State of Illinois Department of Commerce and Economic Opportunity, and conducted by the University of Illinois at Chicago and the University of Iowa. The report was accessed 3/5/10 at: egov.cityofchicago.org/city/.../portalContentItemAction.do?...City...Chicago/.

³⁹ "FCC Launches Examination of the Future of Media And Information Needs of Communities in a Digital Age," Public Notice GN Docket No. 10-25, Mar. 8, 2010, p. 1.

⁴⁰ AC Nielsen Company, http://en-us.nielsen.com/main/insights/nielsen_a2m2_three

⁴¹ Pew Research Center, "Public Evaluations of News Media," 2009, <http://people-press.org/report/543/>.

⁴² *Prometheus Radio Project v. Federal Communications Commission*, U.S. Third Circuit Court of Appeals, 2004

country. This represents one of the few consistent growth sectors in the U.S. economy. Contributing to this growth is the fact that, since the 1980s, many social services formerly provided by government agencies have devolved to the private sector. Although religious institutions and non-profit organizations have been instrumental in filling gaps in essential services, they are under-represented in the commercial media. Historically, Public Service Announcements (PSAs) have provided at least a minimal platform for non-profits to get their messages out, but in the late 1980s even these modest amounts of non-entertainment content on television all but vanished. According to Dessart, “Deregulation saw government relinquishing the model of trusteeship of a scarce national resource in favor of a marketplace model.”⁴³ This resulted in a significant reduction in the amount of air time devoted to PSAs on television. In fact, public affairs programming overall has decreased in recent decades. By 2003, half of the 285 stations surveyed aired no public affairs programming.⁴⁴ This has left PEG access as the most available and responsive television outlet for non-profit and civic organizations. In addition to providing consistent air time, the training provided by PEG staff has allowed many non-profit groups to produce their own shows, tailor their messages, and generally become much more sophisticated and cost-effective in public relations, outreach, recruitment, and marketing efforts.

Conclusion

The role of the FCC is to determine what government regulations or supports will serve the public interest. The empirical evidence clearly shows PEG access facilities serve the public interest in essential ways not addressed by commercial media, and that PEG access cannot continue to serve those purposes without meaningful legislative and financial support. Without sustainable funding, PEG access cannot fulfill its demonstrated potential; without regulatory protections and regulation, its survival is imperiled. If this unique resource were to be lost, it would leave a gaping hole in the social and political fabric of our country.

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⁴³ Dessart, George. “Public Service Announcements,” Museum of Broadcast Communications web site, accessed 3/31/10 at www.museum.tv/eotvsection.php?entrycode=publicservic.

⁴⁴ Yan, M.Z. and Napoli, P.M. “Market Competition, Station Ownership, and Local Public Affairs Programming on Broadcast Television,” *Journal of Communication*, 2006, Vol. 56, p 804.