

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Examination of the Future of Media and)
) GN Docket. No. 10-25
Information Needs of Communities in a)
)
Digital Age)

**COMMENTS OF
AMERICAN COMMUNITY TELEVISION, INC.**

Introduction

American Community Television (ACT) is a nonprofit 501 (c) 4 that has been organized to educate and advocate on behalf of Public, Educational and Government (PEG) access television across the country. Its board consists of PEG access professionals and telecommunications consultants to local government with over ninety years combined experience. We know PEG, we know the video industry and we know telecommunications issues.

We believe that PEG access television is at a serious crossroad which has been primarily brought on by the industry's unrelenting push to weaken legislative protections for PEG and remove the existence of PEG centers and channels from the local community.

Now, more than ever, local communities are turning to PEG channels for information as local newspapers fail, media consolidation continues and local information is subsumed by a twenty-four hour cable news cycle.

We believe that PEG channels deliver open and transparent government; exciting educational opportunities; unique communications capabilities for nonprofits; and the Constitutional guarantee of freedom of expression.

We urge you to weigh seriously our comments and understand the large and important role PEG channels and operations play in the future of media and the information needs of the local community in the digital age. No other medium, not radio, not noncommercial broadcasting, not newspapers, nor the internet, has the capabilities and potentials of PEG channels to inform the local community.

We also respectfully urge the Commission to undertake a comprehensive PEG access channel mapping study. ACT maintains a list of almost 1,100 access operations, most of which operate more than one channel, we estimate the number of channels in the United States to be about 5,000. However, until a comprehensive study is done, we have to rely on estimates rather than hard numbers. This important media deserves to be studied so that everyone can understand the true scope of depth of PEG access.

Comments

1. Are these channels being used as effectively as possible for the provision of useful news and information to communities?

There is a great deal of variance in what could be called “effective” use of PEG channels for the provision of useful news and information to communities. Frequently, but not always, PEG centers in larger metropolitan areas often can provide more useful news and information, because they typically have the money and the human resources to do so. However, there are many instances of PEG centers with small budgets and staff that provide tens of hours of new original programming each week.

Of the approximately 1,500 PEG access centers in the country, one-third of these PEG centers operate channels on less than \$100,000.00 per year. That amount takes into account both capital and operating expenses (equipment and salaries). There are many instances in which the PEG channels are operated by “one-man” shops. Which means the creation of programming, the scheduling of programming, the maintenance of equipment, the management of volunteers and the management of the channel itself, is done by one or two people; twenty-four hours per day, seven days per week.

PEG channels have been historically under-funded, and in those instances where funding has been robust (for example Massachusetts), PEG centers and PEG channels thrive.¹ But still we see in cities large and small, PEG channels provide information no other media outlet provides. A recent scan of PEG channel programming revealed the following types of programming. (Attachment A—Sample Programming Schedules).

¹ Massachusetts state law requires the majority of the franchise collected by the municipality be used for PEG. For that reason, there are approximately 106 access centers in Massachusetts, representing approximately 250 access channels.

City/County Council Meetings (City Council, Zoning Boards, etc)

Government Agency Programming (such as Police and Fire Departments)

Safety Programming

Health Programming

Parks and Recreation Programming

City/County Sponsored Events

School Board Meetings

Focus on Schools Programming (curriculum reviews, district mapping, school schedules)

School Sports Programming

School Arts Programming

Academic Competitions

Higher Education Programming (spotlight on colleges, universities, entrance requirements)

Distance Learning (for and not for credit courses, GED)

Higher Education Sports Programming

Higher Education Arts Programming

Higher Education Academic Competitions

Community Arts and Festivals Programming

Community Information Programming (spotlight on recreation, dining, entertainment, shopping)

Neighborhood Shows

Seniors Programming

Shows by and about Children

Shows by and about Persons with Disabilities

Second Language Programming

Ethnic and Cultural Programming

Women's Programming

Gay and Lesbian Programming

Fitness and Lifestyle

Home and Garden Programming

Entertainment (music, dance, drama, comedy)

Animal Shows

Political Programming (discussions, debates, candidates, "get out the vote," etc.)

Military Programming

Local History and Culture Programming

General Non-Profit Programming

Religious Programming

It is this critical local programming that is absent from all other electronic media.

Recently, Commissioner Michael J. Copps cited a Norman Lear Center Study that found in a typical half-hour news broadcast in Los Angeles, hard stories about local government amount to less than half a minute.²

The effects of radio ownership consolidation on local content have been well documented. According to the Future of Music Coalition (FMC), they found that in

² Statement by Commissioner Copps On a Major New Study of the Los Angeles Media Market http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296830A1.pdf

2005, half of listeners tuned to stations owned by only four companies, and the top ten firms had almost two-thirds of listeners. At the same time, radio listenership has declined 22 percent since its peak in 1989 in the top 155 markets.³

The Public Broadcasting Service (PBS), while valuable and necessary, also does not provide much local content. PBS stations typically serve an entire region or a state and most of their content is nationally or internationally produced and nationally scheduled.

Additionally it is rare for local daily or weekly newspapers, to the extent they even exist with the declining advertising revenues, to cover the range of nonprofit organizations, government entities and educational institutions, in the detail that PEG channels can provide.⁴

Simply put, PEG channels can provide: unedited gavel to gavel coverage of local government meetings; a half-hour to an hour of programming time to a local nonprofit; distance learning courses and coverage of school board events and meetings; and a wide range of individually produced programming; unfettered by time constraints, editorial control or commercial requirements.

In this environment of media consolidation and commercial failure, PEG is uniquely situated to be the source for local information. Even in an environment where there are diminished resources for creating new original local programming, there is

³ Peter DiCola, *False Premises, False Promises*, Future of Music Coalition (2006).
<http://www.civilrights.org/publications/low-power/consolidation.html> (last visited May 3, 2010)

⁴ Daily and weekly local newspapers are facing a crisis of diminished readership and falling circulation. This crisis brings into question whether daily or local newspapers will continue to be available in the foreseeable future to cover local news and events. New York Times, Kathryn Seelye, *Newspaper Circulation Falls Sharply*, October 2006.
http://www.nytimes.com/2006/10/31/business/media/31paper.html?_r=2&ref=business&oref=slugin (last visited May 5, 2010)

tremendous value in operating a bulletin board system. PEG bulletin boards are used to provide information on a wide variety of issues and topics: school closings and school lunch menus; local road work and detours; health screenings; local resources for assistance (such as food banks and senior services); jobs postings; nonprofit services and events; government meeting schedules; information on recycling; community sponsored events; etc.

Uniquely, PEG channels provide second language programming that is critical to their local community. While the cable and satellite industries focus on providing commercial Spanish language programming; PEG channels have been known to have the following language programming on (dependent again on their local community's needs) in addition to Spanish: Greek, Czech, Hungarian, Albanian, German, French, Portuguese, Vietnamese, Chinese, Korean, Hmong, Farsi, Arabic, Hebrew, and Swahili, among others.

Persons with disabilities are absent from most main stream media, especially broadcasting and cable. But, PEG channels provide programming by and about persons with disabilities. This is a critical distinction for PEG, any individual person or group of people with disabilities are capable of creating programming in the community that addresses their unique needs, provides information on resources and creates community for persons with disabilities.

Also absent from main stream media are the elderly. Or, if there are any shows that address the elderly, they typically are programs that deride them or depict them as less than capable. PEG channels are well used by seniors and the elderly. AARP has many chapters across the country that produce programming for local PEG channels.

And other senior groups and individuals produce programming with many of these being retired veterans.

PEG channels are also an effective way to provide state and federal government programming. Army Newswatch (produced by Soldier's Radio and Television) is a bi-monthly television show that produces a wide variety of newscasts on issues critical to Army active duty personnel and retirees. It is currently on 900 PEG access channels with an estimated value of \$25,000,000.00 in free air time for the Department of Defense. The Road to Recovery television series is a program about mental health and addiction, it is produced by the Substance Abuse and Mental Health Services Administration (SAMHSA) and is on 511 PEG access channels. A review of the channels who carry the Road to Recovery series found it plays an average of 12 times per month on these channels with an estimated value of free air time to the Department of Health and Human Services at \$14,000,000.00 per year. PEG channels across the country accepted bulletin board slides and video programming from the U.S. Census Bureau in their campaign to educate people about the census.

There are also national nonprofits that distribute to PEG channels. Classic Arts Showcase is one example. It provides a satellite feed to PEG channels and PEG channels schedule in as much of that programming as they wish. Typical schedules show Classic Arts Showcase on from one to two hours per day depending on the PEG channel's local programming priorities.

And one cannot ignore the part religious programming plays on PEG. Every kind of religious programming can be found on PEG channels dependent on the demographics of the local community. For many, this religious programming is the only way they can

keep in touch with their local religious institutions, because of an inability to attend religious services (shut-ins, etc.).

To answer the question, yes, PEG channels are, for the most part, being used as effectively as possible for the provision of useful news and information to communities. They certainly have much more variety than any other television medium, even given the large number of channels offered by video providers. And most importantly, they are local and provide much more local information than the local newspapers or radio, because they can present a parade from start to finish or give an individual an hour a week to discuss Lupus or show a candidate's debate unedited in its entirety. It would be a useful exercise to have any local broadcast affiliate produce the amount of local content that its neighbor PEG channel produces on \$100,000.00 per year or less, which is what one-third of PEG channels in this country have for a budget.

Pound for pound, dollar for dollar, PEG channels do an excellent and effective job of providing useful news and information to local communities.

2. How has the role of PEG channels changed over time, and how could their effectiveness be improved?

Over the past forty years, PEG channels have become embedded in their communities as a source for local government, educational and nonprofit information. It is not unusual for medium sized PEG access centers to train one hundred to two hundred community producers each year. Religious and nonprofit organizations regard public access as a tool for outreach and community service. Police departments rely on government access to communicate important safety information. High schools and

colleges use educational access to deliver homework assistance and vocational training. And individuals turn to public access to create programming on subjects ranging from the arts to politics.

PEG channels have and are broadening their deliverable products. PEG channels are facilitating and integrating new technologies into their community service: whether it is video on demand; producers delivering video via phone cameras; live interview programs using Skype; studios in a box; etc., PEG channel managers are constantly evaluating new technologies and inventing ways those technologies can be used for PEG programming and community training.

The one constant in the last forty years has been the never ending attempt by industry operators to weaken or eliminate PEG channels.

In New York state, Time Warner argues that PEG channels must be shared across several communities, even though New York state law is crystal clear that every franchise must contain, at a minimum, one Public access channel and one Government/Educational access channel.⁵

Charter recently announced it would be slamming the access channels into the 900's, off the basic tier of service and into the digital stratosphere.⁶

Several cities in Michigan sued Comcast after it announced that it would slam the PEG channels off the basic tier. Comcast finally settled the lawsuit, agreeing to leave the channels on the analog basic tier and to provide a grant to the cities for PEG, that

⁵ NYCRR 16 §895.4

⁶ "Charter moves Public Access TV into Cable Stratosphere," Paul Hampel, St. Louis Post Dispatch, February 21, 2010

settlement came within weeks of Comcast's announcement that it would seek a merger with NBC Universal.

The City of Los Angeles, the Sacramento Metropolitan Cable Television Commission and the City of El Segundo have launched a lawsuit over AT&T U-verse's non-delivery of PEG channels as individual channels, but as an on-demand menu on channel 99 in which all channels in a region are lumped together. The plaintiffs contend that AT&T U-verse's delivery of channel 99 on its U-verse system is a violation of the Digital Infrastructure and Video Competition Act (DIVCA) of 2006.

Statewide/state issued franchising legislation that was pushed by the industry has or will eliminate all PEG funding in six states (Florida, Georgia, Indiana, Missouri, Ohio and Wisconsin) by 2012.

In Florida, operators lobbied for and won a law that allows them to do "push polling" in which a majority of the subscribers (not a majority of those who return the survey) must indicate that they want the public access channel. The subscribers are to be informed in the course of the poll that public access is uncensored and may contain "adult" content.

In Los Angeles, Time Warner shut down twelve access studios after the passage of DIVCA.⁷

In what appears to be a direct violation to the Indiana statewide franchising law, Comcast notified producers in South Bend, Hammond, Merrillville, Mishawaka, Plymouth, Goshen, and Portage that it would be closing production studios and playback facilities for public access television.

⁷ "Cable flips channel on public access tv," Reed John, Los Angeles Times, January 5, 2009.

These are only a few examples, cities and counties who have engaged in franchise negotiations in the past or who are currently engaging in franchise negotiations, will report that the most difficult issue in negotiations is PEG access. And those who work in the access television field can point to the times when operators use the existence of PEG channels on their system in their advertising materials as one of the things that sets them apart, and therefore makes them better, than satellite. But when it comes to being supportive of PEG access or appreciating it as a unique feature of the video system, one that brings value to the video system, cities and counties and their negotiators, have to fight the industry every step of the way to acquire or maintain PEG channels and funding.

These constant attacks on PEG, and the desire of the industry to rid themselves of PEG channels to replace them with revenue generating channels such as “home shopping” or more of any kind of programming, are a barrier to PEG channels as they seek to increase their effectiveness.

For instance, in Wisconsin, PEG channels have to pay to have the channels transmitted, those payments take away revenue that could be used to hire staff or buy updated equipment. We do not believe federal law ever contemplated that municipalities would have to pay to have transmitted what is their legal right to require in exchange for use of public rights of way. If an operator is required to provide a channel, it is a given that the operator is required to transmit that channel. Again, this is just one example of how operators seek to squeeze PEG access off their systems or diminish its effectiveness.

All PEG channels could be more effective if we had more stringent legislation that provided support and channels; a guaranteed funding stream and minimum number of channels, so that PEG managers and municipal representatives didn't have to fight tooth and nail to get what they are due. These channels and support for these channels are not a "gift" from the industry, they are a portion of the rent that the industry must pay in order to avail themselves of a community's streets, sidewalks, easements, etc.; those "public rights of way" that the taxpayers in a community have paid for and as taxpayers, own.

3. Does statewide franchising change the number and composition of PEG channels?

Statewide or state-issued franchising has definitely changed the number and composition of PEG channels.⁸ Between 2005 and 2008, lead by AT&T U-verse, there were twenty statewide/state issued video franchising bills passed. With each successful piece of legislation, the industry was emboldened and subsequent legislation became more deleterious to PEG, to the point that by the time Nevada passed legislation, channels could be aggregated across municipalities served by a single video "hub office." The definition of a "hub office" is left to the operator and according to engineers, could encompass an entire state.⁹ In other words, there could be only three PEG channels serving the entire state of Nevada.

⁸ There is a distinction between "statewide" and "state-issued" franchises. Statewide franchises are a blanket franchise that cover the entire state while state-issued" franchises retain the more traditional geographical boundaries (such as cities, counties) but the franchises are issued by the state rather than the municipality.

⁹ NRS 711.810 Designation of PEG access channels; requirements and procedure; reclamation of channels; applicability.

This model is the AT&T U-verse model, where all PEG channels in a region are aggregated onto one single channel, that being channel 99. Additionally this model requires U-verse to downgrade the original signal sent to them by the PEG channels and therefore what should be channels that are equivalent to other local commercial channels or even the technical equivalent of a PBS channel, now becomes a “stream” or IPTV stream.¹⁰ This stream is delivered at a quarter of the size of a regular channel and PEG programming suffers technical degradation when the subscriber enlarges the picture.

In addition to the AT&T U-verse PEG “solution,” traditional operators have taken advantage of these laws to shut down access studios (and channels) and to de-fund existing PEG support. As mentioned previously, in Indiana, Comcast notified producers in South Bend, Hammond, Merrillville, Mishawaka, Plymouth, Goshen, and Portage that it would be closing production studios and playback facilities for public access television. In most of these instances, Comcast provided thirty days notice to these municipalities. In Los Angeles, Time Warner closed twelve access studios. Elsewhere in California,

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1. A local government that requests capacity for PEG access programming may require a holder of a certificate to designate: (a) Not more than two PEG access channels, if the population within the jurisdiction of the local government is less than 50,000.
(b) Not more than three PEG access channels, if the population within the jurisdiction of the local government is 50,000 or more.
 2. The number of PEG access channels set forth in subsection 1 constitutes the total number of PEG access channels that the holder may be required to designate on any single video service network utilizing a single headend or hub office, or on all commonly owned video service networks that share a common headend or hub office, regardless of the number of local governments served from that headend or hub office. If more than one local government is served by a single or common headend or hub office, the populations within the jurisdictions of all those local governments must be aggregated to determine the total number of PEG access channels under subsection 1.

¹⁰ “Stream” is AT&T U-verse’s own language. See Attachment B Important information Regarding AT&T U-verse’s PEG Solution

there have been approximately fifty access studios and PEG channels that have been shut down.

Looming ahead are six states that will lose all PEG funding between now and 2012. They are Georgia, Florida, Iowa, Missouri, Ohio and Wisconsin. In these states, PEG funding is ceased when the existing franchises expire or a certain date, in some instances it is later and in some it is earlier. We estimate the potential loss of PEG channels in these six states to be approximately four hundred and twenty.¹¹

4. Does it serve to promote the intended benefits from PEG channels or undermine them?

Statewide or state-issued video franchising did not have at its intent any benefits for or from PEG channels. The intent of these state laws was to offer a path of quick entry into the video services market for AT&T U-verse and to short circuit the long standing and effective local municipal franchising model envisioned by the Cable Acts (1984, 1992). Under the guise of “competition” and with a promise that competition would lower prices, AT&T U-verse lobbyists swept through state legislatures across this country and only ceased pressing once they had acquired state legislation in those states where they had an existing footprint. Interestingly, in states where AT&T U-verse took the lead, Verizon followed in lock-step when it came to how PEG would be treated, delivered and funded. However, in New York and Pennsylvania, where AT&T U-verse did not have a significant footprint or their footprint was non-existent, Verizon promoted

¹¹ Based on two-hundred and seven PEG centers with an average of two channels each.

legislation that not only provided an ample number of PEG channels but 3% PEG funding.

The incumbent operators seeing AT&T U-verse's success with state legislators, followed AT&T U-verse's lead with varying degree of effort. And as was previously stated, cable companies such as Comcast and Time Warner have shut access operations all together and they with Cox, Charter, Cablevision and Bright House, have slammed PEG channels into digital oblivion.¹²

Statewide/state-issued video franchising does not serve to promote the intended benefits of PEG channels, and in many instances they are the death knell of PEG channels. The PEG community has lost more channels since 2005 and will lose more channels by 2012, than the total number of PBS channels in this country. This has and continues to be a tragedy of enormous proportions.

5. Are there other ways to provide for the benefits from PEG channels in the digital age?

For some time now, PEG channels have been streaming and archiving videos on their websites. A fine example of this is Worcester Community Cable Access (WCCATV 13) which offers for streaming or downloading over 1,000 videos produced by the local community. Additionally, local governments have enthusiastically adopted digital technology to provide city and county council meetings for viewing at any time on their websites. And Educational access channels such as the Sacramento Educational

¹² A recent study in Omaha, Nebraska found that the local public access channel lost half its audience when Cox slammed it off the basic tier and into the digital tier.

Cable Consortium regularly feature videos produced by students for downloading and streaming on their websites. Integrated into this is iPod delivery of PEG programming, YouTube uploads and Facebook postings of community produced programming.

PEG access operators are at the forefront of finding creative uses for all technologies, including digital, to expand the reach and scope of delivery of PEG programming.

That said, there is no replacement for good old fashioned television. The argument has been made by the industry that PEG channels aren't necessary given the variety of platforms available today in electronic media, particularly the internet. But in the midst of these arguments, we note that industry and programmers are not migrating all of their content to a web based platform, if anything, there are more television channels being created every day.

Commercial media does not replace its television channels with internet-only content delivery. In fact, they use the internet to drive more viewers to their programming on television. Case in point, ESPN offers video clips not full length video programs on its website. Each of these clips typically runs over one minute to four minutes in length. These clips highlight the programming that has been on ESPN; interviews, winning moments, breaking news, etc. ESPN provides content across several platforms of television, radio, magazines and the internet. It encourages people to sign up with ESPN so they can keep up with their interests through alerts and emails, with the ultimate goal of driving viewers to their channels and more importantly delivering eyes to their television advertisers.

HBO uses its website to promote programming on HBO with what they call “minisodes.” These are five minute or so clips, again providing highlights from their television series and times when their series will air. Sopranos is still listed with a promotion on buying the Sopranos series and trivia games about the shows and offers to let people vote on their favorite episodes.

Is PEG embracing the digital age? Yes. Has the digital age become a substitute for a television channel? No. Primarily because studies show that people are watching more television, not less.¹³ The American viewer is watching television an average of one hundred and fifty-one hours per month as opposed to just a few hours per month watching videos online or on mobile devices.

“Viewership of videos on the Internet and on mobile phones also increased from the summer months, Nielsen said, although the rise was more modest. People who watch video on the Internet spend about three hours doing so per month, and those who watch video on mobile devices spend nearly four hours per month that way.”

The latest trend even among younger generations is to surf the net with a wireless connection while watching television, “electronic multitasking.”

Additionally because of the lack of widespread broadband deployment, availability and affordability, PEG channels are critical information providers to underserved populations such as the poor, the elderly and the disabled.

¹³ TV viewing at “all time high” Nielson says
<http://www.cnn.com/2009/SHOWBIZ/TV/02/24/us.video.nielsen/index.html> (last visited May 4, 2010)

The nature of the internet is passive, in that most often a person must know what they wish to find and then seek it out. However, television is an aggressive medium in that it comes to the viewer and the viewer then makes a determination whether to engage. The internet is not a substitute for television. The need for PEG channels to augment their television channel video delivery with other forms of digital delivery is tangible, but the need for PEG channels to continue to exist and thrive is critical.

6. How should operators of PEG channels work with noncommercial television and radio licensees, as well as with other nonprofit media entities?

This question seems to presume that operators of PEG channels may not be working with noncommercial and radio licensees as well as other non-profit media entities and nothing could be further from the truth.

One interesting application that can be found around the country is when PEG channels are showing bulletin boards they simultaneously air a local community radio's signal, so that people can listen to the local community radio station while the bulletin board programming is on. Another service that many PEG access centers provide is to run the audio from the local Radio Reading Service under the bulletin board video. For instance, in Charlotte, North Carolina, the Radio Reading Service audio is recorded in the access center and is played with the bulletin board programming from 2 p.m. to 3:30 p.m. weekdays.

There are many instances where PEG operators take programming from the local PBS entity to show on the channel. PEG operators typically are involved in local film festivals such as Access Sacramento which is in its tenth year of hosting a cinema festival

called “A Place Called Sacramento.” It is a complete cinema festival with screenings and awards. PEG channels are the perfect place for a budding or experimental filmmaker to get their creation on television and out to a wider audience.

Many access operators house in their facilities local radio stations or Low Power FM radio stations, and were quite involved in advocating for the expansion of LPFM radio licenses. PEG access centers such as Grand Rapids Community Media Center not only houses a full power FM radio station, PEG channels, but also manages a local vintage theater which they have renovated to host live concerts, events and even conferences. In addition, Grand Rapids offers full service IT services to nonprofit entities in Michigan and nationwide, to include web development and hosting.

Several PEG access centers also host art galleries, such as Plymouth Area Community Access Television.

Additionally, PEG channels are frequently called on by the local commercial broadcast affiliates to provide “B-roll” footage of community events; such as parades, festivals, candidate debates, etc.

There is a wide range of involvement between PEG access centers and other nonprofit media entities (as well as commercial entities), and that involvement depends on the personality of local community and the resources of the PEG channels.

Respectfully Submitted May 7, 2010,



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