



September 28, 2010

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12 Street, S. W.  
Washington, DC 20554

Re: *In the Matter of Petition for Declaratory Ruling Regarding Public,  
Educational and Governmental Programming.*  
MB Docket No. 09-13; CSR-8126, CSR-8127

Dear Secretary Dortch:

We support the emergency petition filed by the McAllen Independent School District asking the FCC to issue a standstill order that prevents cable operators from treating Public, Educational and Governmental (PEG) access television channels in a discriminatory manner.

Nationwide, PEG channels in various communities have been “slammed” off the basic tier of service and communities have worked to get the PEG channels back on the basic tier with mixed results. Those communities that have the resources to pursue legal action have done so with some success, as was the case in *City of Dearborn Et Al v. Comcast of Michigan III, Inc. Et Al*. Those communities without the resources to file suit have been left at the mercy of the cable operators.

We have filed comments with the Missouri Public Service Commission pointing out the channel slamming practices of Charter Communications in that state. In Missouri, Charter has moved or is moving all PEG access television channels to the 900’s.<sup>1</sup> The municipalities affected do not feel they can risk a lengthy, expensive legal process to get the channels returned to the basic tier.

A similar situation occurred with Bright House Networks in Florida. In that state, Bright House had slammed the PEG channels to the 600’s and 900’s. The cities of St. Petersburg and Tampa filed suit but did not prevail and today PEG channels on Bright House systems in Florida are on the 600’s and 900’s.<sup>2</sup>

In these instances, cable operators claimed that they needed to move the PEG channels to the high end of the digital tier in order to free up bandwidth for advanced services or to compete effectively. However, we find in other states where Charter and Bright House Networks have systems, PEG channels have been left on the basic tier.

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<sup>1</sup> The PEG channels in the following municipalities have been moved to the 900’s: City of St. Louis, County of St. Louis, Cape Girardeau, St. Peters, Cape Charles.

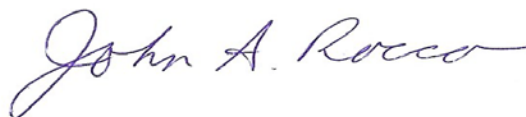
<sup>2</sup> In the United States District Court, Middle District of Florida, Tampa Division.

We agree with the petitioners claim that the legislative record supports PEG access channel placement on the basic tier.<sup>3</sup> PEG channels do serve a substantial and compelling interest in open government, the marketplace of ideas and a well informed citizenry. A recent study of PEG channel operations showed the variety of programming on PEG channels.<sup>4</sup> This programming included: government services and meetings (including boards of education); school district, college and university programming; community awareness and informational programming; special interest programming (such as seniors, children, second language, ethnic and disabilities programming); religious and lifestyle programming; political, military, music and entertainment programming; and programming by nonprofits.<sup>5</sup>

PEG access television is unique to the community in which it resides. The McAllen petition presents a clear example of how a PEG access operation seeks to meet the needs of its community; in particular the challenge of a school district that serves a majority Hispanic population with a majority of the students eligible for free or reduced-price lunches. The examples of programming provided in the petition illustrate the McAllen Independent School District's effort to communicate important information to the student population, their parents and the community as a whole.

Because PEG programming is important to the local community and fills the need for localism in television programming, not being met by any other television channels, we urge the Commission to grant the emergency petition of the McAllen school district. Additionally, we urge the Commission to ensure that cable operators meet their basic obligations under the Cable Act. The Commission cannot allow cable operators to intimidate local communities and it cannot leave PEG access television channels vulnerable to differing interpretations of the law.

Sincerely,



John A. Rocco, President  
American Community Television

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<sup>3</sup> PEG programming is delivered on channels set aside for community use in many cable systems, and *these channels are available to all community members* on a nondiscriminatory basis, usually without charge . . . . PEG channels serve a substantial and compelling government interest in diversity, a free market of [ideas,] and an informed and well-educated citizenry . . . . Because of the interests served by PEG channels, the Committee believes that *it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.* H.R. Rep. No. 102-628 at 85 (1992) (emphasis added)

<sup>4</sup> "PEG Benchmarking Study" by Front Range Consulting, Inc., and Riedel Communications, Inc.

<sup>5</sup> The study discovered as much as forty percent (40%) of programming on Public access was by nonprofits.