

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Applications of Comcast Corporation, General Electronic Company, and NBC Universal, Inc.)	MB Docket No. 10-56
)	
For Consent to Assign Licenses or Transfer Control of Licensees)	
)	

REPLY COMMENTS OF AMERICAN COMMUNITY TELEVISION

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SUMMARY

The approximately 5,000 Public, Educational and Government (PEG) access television channels across this country deliver open and transparent government; exciting educational opportunities; unique communications capabilities for nonprofits; and the Constitutional guarantee of freedom of expression. They are a rich resource that no other country enjoys. Their ability to be used as effectively as possible for the provision of useful news and information is unique but dependent on many factors, such as legislative or regulatory structure and monetary support. Even in the most difficult circumstances PEG channels deliver local programming and information found nowhere else in media. However, PEG centers and channels are facing extinction in many communities because of the telecommunications industry's unrelenting push to weaken legislative protections and funding sources at the federal, state, and local franchising levels. We believe Comcast's "Commitments" to PEG access in this proceeding are carefully crafted to effectively enable Comcast to disadvantage PEG channel placement, subvert public access to government and educational programming, and discriminate against PEG content in On Demand platforms.

ACT wishes to inform the FCC that it supports and agrees with the Comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA") in this proceeding as they pertain to describing and advocating the vital importance of PEG channels in our nation's communities.¹ PEG programming is extremely diverse, and serves the most local interests of communities.

¹ See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses, Comments of the National Association of Telecommunications Officers and Advisors 3-4, MB Docket No. 10-56 (June 21, 2010).

We call on the FCC to make Comcast's placement of PEG channels on the basic tier a condition of the merger. PEG channels must be carried on the basic tier, regardless of whether the signal is digital or analog, so that every subscriber will be able to get the channels without having to buy through to a more costly tier of service or to purchase or lease more expensive equipment than is absolutely necessary to receive basic cable service programming.

We are very concerned with 1) Comcast's apparent exclusion of public access in its mission to promote localism, 2) the suggestion that Comcast will develop On Demand and On Demand Online support for PEG that is different from On Demand platforms for other programming types, and 3) the probability that Comcast will force PEG programming to On Demand in lieu of full channel support.

Comcast omitted "Public access" in its Commitment 12. We ask the Commission to condition the merger on Comcast's revision of Commitment 12 to explicitly include public access support, along with educational and government access.

We ask the Commission to ensure that Comcast does not discriminate against PEG in On Demand delivery technology. PEG content must be delivered in a manner at least as functional and accessible to consumers as other On Demand content.

We ask the Commission to condition the Comcast / NBC Universal, Inc. merger on an enforceable commitment that PEG channels and PEG content will be treated the same as all other local broadcast channels carried on Comcast's cable systems. Comcast should not pressure communities to deliver PEG content through On Demand or On Demand Online instead of through a channel or channels on the basic cable television tier.

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REPLY COMMENTS OF AMERICAN COMMUNITY TELEVISION

American Community Television, Inc. (“ACT”) respectfully submits these Reply Comments in the above-captioned proceeding.

I. INTRODUCTION.

ACT is a nonprofit 501(c)(4) corporation 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 governments with over ninety years combined experience. We are veterans of PEG and the video industry. We are experts in telecommunications issues. We have serious concerns about the future of PEG access programming in light of Comcast Corporation’s proposed acquisition of NBC Universal, Inc., notwithstanding the “commitments” Comcast has made to the Federal Communications Commission (“FCC”).

PEG access television is at a serious crossroad. PEG centers and channels are facing extinction in many communities because of the telecommunications industry's unrelenting push to weaken legislative protections and funding sources at the federal, state, and local franchising levels. Comcast Corporation, through its subsidiaries and affiliates (collectively, "Comcast") has worked to eliminate public access television in several markets, including its hometown of Philadelphia. We believe Comcast's "Commitments" to PEG access in this proceeding are carefully crafted to effectively enable Comcast to disadvantage PEG channel placement, subvert public access to government and educational programming, and discriminate against PEG content in On Demand platforms.

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 twenty-four hour cable news networks. In this regard, PEG channels continue to deliver open and transparent government access, exciting educational opportunities, unique communications capabilities for nonprofits, and the Constitutional guarantee of free expression. Stated differently, PEG channels have been, and continue to be, a primary source of local, high-quality video programming that often is not available from commercial or "traditional" media outlets. This was the promise of PEG access channels and PEG access funding when the protections of the Cable Communications Policy Act of 1984, as amended, were enacted and that promise has been largely fulfilled, at least until actions by federal and state authorities and Comcast have threatened or eliminated the lifeblood of PEG: adequate funding; sufficient channel spectrum; and quality/non-discriminatory channel placement.

We urge you to weigh seriously our comments and understand the large and important role PEG access plays in the information needs of the local community in the digital age. No

other medium—not radio, noncommercial broadcasting, newspapers, or the Internet—has the capabilities and potential of PEG channels to inform, educate and entertain the local community.

II. PEG PROGRAMMING PROMOTES DIVERSITY AND LOCALISM.

ACT wishes to inform the FCC that it supports and agrees with the Comments filed by the National Association of Telecommunications Officers and Advisors (“NATOA”) in this proceeding as they pertain to describing and advocating the vital importance of PEG channels in our nation’s communities.¹ PEG programming is extremely diverse, and serves the most local interests of communities. The following list illustrates the types of services and programming found on PEG channels.²

- City/County Council Meetings (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)
- Higher Education Sports Programming
- Higher Education Arts Programming
- Higher Education Academic Competitions
- Community Arts and Festivals Programming
- Musical and Dance Performance Programming

¹ See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses, Comments of the National Association of Telecommunications Officers and Advisors 3-4, MB Docket No. 10-56 (June 21, 2010).

² This sample list of programming taken from U.S. PEG access channel programming guides through research by Riedel Communications, Inc.

- 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
- 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

Additionally, we agree with NATOA in highlighting the important role PEG channels can and do play in emergency situations such as road closures, evacuations and disaster preparedness. This is especially critical in rural communities that do not have broadcast stations or are served by broadcast stations located hours away in larger metropolitan markets.

III. COMCAST’S COMMITMENTS ARE UNCLEAR AND DO NOT ADEQUATELY PROTECT PEG.

We are concerned by Comcast’s treatment of PEG channels and the lack of clarity in Comcast’s stated Commitments concerning PEG access.³

³ See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., to Assign and Transfer Control of FCC Licenses, Applications and Public Interest Statement 68-69, MB Docket No. 10-56 (Jan. 28, 2010) (hereinafter “Comcast Application”).

A. Comcast Should Keep PEG Channels on the Basic Tier.

In its Application, Comcast states, “Commitment # 11. With respect to PEG channels, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e., until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.”

Note that in this Commitment, Comcast does not guarantee that the PEG channels will be placed on a “basic” digital tier. This is an important omission. The digital tier(s) contain hundreds of channels and we have seen PEG channels slammed to the 600s and 900s by other cable operators.⁴ The placement of PEG channels in the equivalent of “digital Siberia” detrimentally affects the ability of PEG programmers to communicate with their intended audience because it is ACT’s experience that few subscribers actually watch any channels in the 400-900 range.

Historically, Comcast was the first cable operator to move PEG channels into the high analog basic tier, grouping PEG channels in the 90s and replacing PEG channels’ lower channel positions with home shopping and real estate channels. We have no reason to believe that in the digital environment Comcast will not condemn PEG channels to a digital Siberia. We call on the FCC to make Comcast’s placement of PEG channels on the basic tier a condition of the merger. PEG channels must be carried on the basic tier, regardless of whether the signal is digital or

⁴ See David Hunn, St. Louis Aldermen Fired Up at Charter; Want Cable Co. to Move Public Channels Back, St. Louis Post Dispatch, July 1, 2010 (available at http://www.stltoday.com/news/local/govt-and-politics/political-fix/article_a215677e-853d-11df-96e2-00127992bc8b.html); Linda Haugsted, Bright House Kicks PEG Channel to Digital, Multichannel News, September 5, 2007 (available at http://www.multichannel.com/article/87994-Bright_House_Kicks_PEG_Channel_to_Digital.php).

analog, so that every subscriber will be able to get the channels without having to buy through to a more costly tier of service or to purchase or lease more expensive equipment than is absolutely necessary to receive basic cable service programming. This is particularly important given that PEG channels are highly popular among elderly populations who may not have the ability to navigate complicated menus or the income to support higher-priced service tiers.

Any FCC order approving the proposed Comcast/NBC Universal, Inc., merger must be clear and it must require Comcast to carry the PEG channels, without degradation, on the basic tier when it moves the PEG channels to digital delivery. Moving of the channels to digital delivery should occur as Comcast promises in Commitment 11, which is only with community consent or when the entire system is converted to a digital format. We ask the FCC to clarify this Commitment to ensure basic tier placement of all PEG channels.

B. Comcast Should Host PEG Content On Demand and Online, Without Discrimination or Delay.

Comcast's Application includes another so-called Commitment to PEG: "Commitment # 12. To enhance localism and strengthen educational and government access programming. Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing."⁵ We are very concerned with 1) Comcast's apparent exclusion of public access in its mission to promote localism, 2) the suggestion that Comcast will develop On Demand and On Demand Online support for PEG that is different from On Demand platforms for other programming types, and 3) the probability that Comcast will force PEG programming to On Demand in lieu of full channel support.

⁵ Comcast Application at 69.

1. Comcast must include public access in its PEG support.

Commitment 12 speaks volumes in what it does not say. This Commitment blatantly leaves out the first prong of PEG: public access programming. It is no mistake that Comcast chose this language to “enhance localism and strengthen educational and government access programming,” at the expense of public access.⁶

When statewide or state-issued franchising laws were passed in various states, Comcast closed many public access centers. In some instances Comcast gave local communities only thirty days notice of the closures.⁷ These actions certainly do not exhibit a commitment to localism; rather they exhibit Comcast’s long standing disdain for public access programming.

In its own hometown, Philadelphia, activists worked for twenty-seven years to get a public access channel, even though it was part of the franchise agreement between Comcast and the City of Philadelphia. During that time, city council members were told that if they had public access they would have the Ku Klux Klan and nudity on the channel. Council members were shown videos of a woman soliciting with sexual material and told it was a sample of public access programming. However, it was actually a leased access program on Time Warner’s system in New York City.⁸ Bunnie Riedel, executive director of ACT, made several trips to Philadelphia to testify on behalf of public access and was told by council offices that Comcast had launched an aggressive campaign to prevent public access television in Philadelphia. If Comcast’s behavior in Philadelphia is any indication of its attitude toward public access

⁶ *Id.*

⁷ For a partial list of closures, see Bunnie Riedel, PEG Channels’ New Best Friend, Multichannel News, December 7, 2009, (available at http://www.multichannel.com/article/438673-PEG_Channels_New_Best_Friend.php).

⁸ The program displayed was the “Robin Byrd Show,” which is on Time Warner Cable Channel 35. Manhattan Neighborhood Network (the public access channels) is on channels 34, 56, 57 and 67.

programming, and its behavior toward public access television in states such as Indiana, Illinois and Michigan, where it has closed numerous access centers, are any indication, Comcast cannot be trusted to support public access television. We ask the Commission to condition the merger on Comcast's revision of Commitment 12 to explicitly include public access support, along with educational and government access.

2. **Comcast should treat PEG On Demand content the same as all other On Demand content.**

Comcast committed to “develop a platform to host PEG content On Demand and On Demand Online within three years of closing.” This language is troubling because it suggests that Comcast's existing On Demand and On Demand Online system would not be used for PEG content. The PEG community has been embattled over the last few years because of the treatment of PEG channels on AT&T U-Verse platform. On that platform, AT&T delivers PEG programming through an on-screen menu system that is difficult and cumbersome to navigate, rather than delivering PEG channels the same as any other channel on their system. This is an issue that has garnered hearings on Capitol Hill as well as prompted petitions before the Commission.⁹

We ask the Commission to ensure that Comcast does not discriminate against PEG in On Demand delivery technology. PEG content must be delivered in a manner at least as functional and accessible to consumers as other On Demand content.

⁹ See Petition for Declaratory Ruling of The Alliance for Community Media, MB Docket 09-13 (January 30, 2009); Petition for Declaratory Ruling of the City of Lansing, Michigan, MB Docket 09-13 (January 27, 2009).

3. Comcast should commit to providing On Demand delivery as an addition to actual channels, not a replacement.

Comcast must clarify and commit that any platform used to host PEG content On Demand and On Demand Online be in addition to, and not a substitute for, actual television channels that are the functional equivalent of all other channels on a cable system. This equivalency means that PEG channels are treated exactly the same way local commercial broadcast channels (including PBS) are treated.

We ask the Commission to condition the Comcast / NBC Universal, Inc., merger on an enforceable commitment that PEG channels and PEG content will be treated the same as all other local broadcast channels carried on Comcast's cable systems. Comcast should not pressure communities to deliver PEG content through On Demand or On Demand Online instead of through a channel or channels on the basic cable television tier.

IV. CONCLUSION.

The PEG community has over forty years of experience dealing with cable and video operators. In many instances, that relationship has been very positive. However, PEG access television did not come about because cable and video operators felt an extreme sense of public interest obligation. Rather, PEG exists because communities negotiated hard for truly local, community channels in exchange for operators' use of public rights-of-way.

We ask that the Commission issue strict, clear guidelines to Comcast in its treatment of PEG channels as a condition of this merger. Comcast already has twenty-six percent of the multichannel video consumer market of this country, and in many places holds a cable

monopoly. Its programming, internet delivery, and phone services are vast.¹⁰ PEG access television is important to communities because it is often the only source of local television, it keeps government transparent, it provides educational opportunities, and it allows local individuals and nonprofit organizations to communicate important information to the community.

We frequently find that, in local communities, Comcast and other cable operators act negatively toward PEG access television and there is very little, save an expensive lawsuit, that local government or subscribers can do about it. Comcast and cable operators know this and know local government does not want to be involved in costly litigation and therefore they abuse PEG access television through channel slamming, shutting down studios, slow or underpaid PEG support to local franchising authorities, bad transmission quality, and delayed response to engineering problems.

We ask the Commission to champion PEG access television in this merger process. We ask the Commission to clearly state Comcast's PEG access television obligations. Commitments 11 and 12 are not enough.

Respectfully submitted,

John Rocco
President

¹⁰ See Matthew Lasar, What Does Comcast Already Own?, post on Ars Technica, December 7, 2009, <http://arstechnica.com/media/news/2009/12/what-exactly-does-comcast-already-own-heres-a-list.ars>.

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