

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

In the Matter of)	
)	
Applications of Comcast Corporation,)	MB Docket No 14-57
Time Warner Cable Inc., Charter)	
Communications, Inc., and Spinco)	
To Assign and Transfer Control of)	
FCC Licenses and Other Authorizations)	
)	
)	
)	

**COMMENTS OF
AMERICAN COMMUNITY TELEVISION
SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS**

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ATTACHMENT A

Summary

American Community Television (“ACT”) and SouthEast Association of Telecommunications Officers and Advisors (“SEATOA”), submit these comments both as ACT individually and as ACT and SEATOA (“ACT Commenters”).

Community Impact of PEG

Public, Educational and Government (PEG) access television has existed since the mid-1960’s and was codified in federal law in the 1984 Cable Act. PEG access television serves a variety of purposes, providing transparency of local government, educational programming, religious programming, community organization programming and as a free-speech forum for organizations and individuals in local communities. Additionally, PEG access television provides state and federal government entities tens of millions of dollars in free air time each year.

PEG Setbacks

PEG access has been and is currently challenged by the cable industry and is particularly challenged by the proposed transactions between Comcast Corporation, Inc., Time Warner Cable Inc, Charter Communications, Inc., and SpinCo (currently referred to as Midwest Cable, LLC). PEG access television has suffered setbacks in the last few years to include, but not limited to:

- 1) Loss of funding due to statewide franchising laws;

- 2) slamming of PEG channels to an extreme upper digital tier (900's, 600's);
- 3) arbitrary practice of charging the municipality, nonprofit entity managing PEG, educational institution for the transmission of the channel by the cable operator;
- 4) the requirement to enter into a Memorandum of Understanding in states with statewide franchising even when there is no such provision in state law;
- 5) PEG access closures in various states with statewide franchising due to loss of funding or the operator walking away from the management of the channel;
- 6) hard-ball negotiations in local franchising requiring an inordinate amount of communities to commence or consider the rare formal franchise renewal process;
- 7) the lack of program guide descriptions and a Video On Demand (VOD) platform or DVR functionality.

ACT and ACT Commenters recognize that the proposed transactions will mean greater negative PEG practices (particularly by Comcast and Charter) and will likely become more widely spread in those States that become new Comcast, Charter or the Charter controlled Midwest Cable territories. In addition, the creation of these larger and more consolidated cable operators will mean a near monopolistic business model. Without significant transaction conditions, these inter-related companies will have an unfair advantage in negotiations or other interactions with municipalities and nonprofits that manage PEG entities and potentially a harbinger of further consolidation of the cable industry following the precedents set in this transaction.

Transfer Conditions Recommended

We request that the Commission protect PEG access television by rejecting the proposed transaction as not being in the public interest or conditioning the proposed transactions on curing the various problems we outline in these comments with significant conditions to protect PEG and prevent further consolidation of the traditional cable industry.

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OFFICERS AND ADVISORS
[ADD SCAN as applicable]**

American Community Television (ACT), AND the SouthEast Association of Telecommunications Officers and Advisors (SEATOA), (“ACT Commenters”) submits these comments in response to the notice for comments on the above applications, released July 24, 2014.

I. Introduction

American Community Television educates and advocates on behalf of Public, Educational and Government (PEG) access television. The SouthEast Association of Telecommunications Officers and Advisors (SEATOA) is a professional association composed of individuals and organizations serving citizens through city and county government and regional authorities in the

states of Georgia, North Carolina, South Carolina, and Tennessee in the development, regulation, and administration of voice, video, data communications, broadband and PEG operations and information systems services.

While PEG access television has existed since the mid-1960's as a result of franchising agreements between local municipalities and cable operators, PEG was finally codified in federal law with the passage of the Cable Act in 1984.

Since that time, PEG access channels have grown to an estimated 5,000 nationwide. In communities large and small, PEG access television plays a critical role in providing local information to the public. PEG access television provides a true community service by televising:

Local government programming such as: city and county council meetings; school board meetings; traffic cameras; local parades and festivals; parks and recreation programming; police and fire department programming. Educational programming such as: distance learning; after school homework shows; high school sporting events; high school and college musical performances; college and university programming; and academic competitions; Public access programming such as: senior shows; shows by and about people with disabilities; unique second language programming (Spanish, Hmong, Portuguese, Greek, Albanian, Farsi, German, Russian, French, Mandarin, Tagalog); shows by and about children; religious programming (over 30% of all programming on Public access is by local religious organizations); local musicians; neighborhood shows; local business programming; political shows; home improvement shows;

cooking shows; public health shows; programming by minority communities; candidate forums; travel shows; local news and events; nature programming; local talk shows; financial advice programs; local arts programming . Additionally, PEG access provides millions of dollars in free air time to the state and federal government with programming such as Army Newswatch (on approximately 1,000 PEG channels nationwide), In the Fight (Air Force) (approximately 800 channels nationwide), NASA (approximately 1,000 channels nationwide), Road to Recovery (Dept. of Health and Human Services) (approximately 750 channels nationwide), and the Pentagon Channel programming (no data available). And millions of dollars in free air time to non-profit programming such as Classic Arts Showcase, Veterans' programming, Rotary clubs, Chambers of Commerce, and League of Women Voters, to name a few.

It can easily be asserted that PEG is the true public service in the public interest in the vast television landscape. And it is a critical distinction, and frequently a selling-point, in the competition between cable and satellite. PEG access television is a value-add for the cable industry, and yet, the industry continues to attempt to diminish PEG's ability to provide local programming by limiting, or in many cases, ending, PEG funding both through its statewide franchising legislation efforts, and its hardball franchising negotiation tactics.

Our comments will illustrate the various ways PEG access is challenged by the cable industry and the serious concerns ACT has regarding the proposed system transactions between Comcast Corporation, Inc. ("Comcast"), Time Warner Cable, Inc. ("Time Warner"), Charter Communications, Inc. ("Charter") and SpinCo (currently referred to as Midwest Cable, LLC ("Midwest Cable"))]

Summary of Comments

Public, Educational and Government (PEG) access television is an important public service outlet as expressed in the intent of the Cable Act of 1984. PEG has suffered serious setbacks in the last few years due to loss of funding, channel slamming, charging for PEG channels, PEG station closure, hard-ball negotiations by cable operators and not having access to all available viewing platforms provided by cable operators to other television outlets.

Commenters submit that the proposed transactions have the potential of exacerbating the problems already experienced by PEG access television operations and municipalities due to a business model that creates near monopoly status for the cable industry.

II. Treatment of PEG Access Television Channels by the Operators Concerned in the Proposed Transactions

Public, Educational and Government (PEG) access television has suffered severe setbacks in the last ten years, due to statewide/state issued franchising, consolidation and growth of cable operators and monumental struggles over funding. ACT Commenters submits that this trend will only increase if the proposed acquisition of Time Warner, the sale/swaps with Charter and the spin-off of Midwest Cable are approved without significant conditions necessary to protect PEG. The intent of Congress in the Cable Act of 1984 was that PEG should be provided as a free

speech forum for use by individuals and organizations and as a vehicle for government transparency. The historical narrative of the Cable Communications Policy Act¹ states:

Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.

However, while Congress was quite clear that PEG channels should be made available to local communities through municipal agreements (franchises) with cable operators and that they should be adequately funded to meet the needs of the community, cable operators have used extreme political and legal pressure to diminish or eliminate these channels, sometimes deliberately flouting the provisions of federal and/or state law.

Examples of this can be seen in Charter's behavior toward municipalities and PEG access in Missouri, Wisconsin and California and Time Warner's behavior in Ohio.

Not long after the statewide franchising law went into effect in Missouri in 2007, Charter slammed PEG channels to "digital Siberia" by moving them to the mid to upper 900's, requiring Basic cable subscribers to rent additional equipment to access them.² While this ignited the ire of the St. Louis City Council, Charter refused to move the channels back to their original

¹ P.L. 98-549 (page 30)

² See [City Council Meetings Get Pushed Off Many Screens](http://www.stltoday.com/news/local/metro/city-council-meetings-get-pushed-off-many-screens/article_7944de68-5acd-5f2f-aca7-cf65d658efec.html) . St. Louis Post Dispatch. February 21, 2010. http://www.stltoday.com/news/local/metro/city-council-meetings-get-pushed-off-many-screens/article_7944de68-5acd-5f2f-aca7-cf65d658efec.html

designation.³ Charter openly claimed it needed the bandwidth to satisfy digital requirements while simultaneously moving the Hallmark Channel into the space previously occupied by the Higher Education Channel (HEC TV) and a home shopping channel into space previously occupied by CSPAN2; which was on the Basic tier of service next to the PEG channels.

Both Charter and Time Warner charge local communities to transmit the PEG channels. In Long Beach, California, subscribers cannot receive the Los Angeles County channel because Charter requires the City of Long Beach to pay for the transmission of the County channel. In Cincinnati, Ohio, the Princeton City Schools District has given up its educational channel because it cannot afford to pay the cost of transmitting the channel charged by Time Warner. Charging for the transmission of the channels seems to be applied only in those situations where the statewide franchising law is either silent or vague on the issue, basically these companies do this wherever they believe they can get away with it.

ACT Commenters maintain that holding communities hostage to exorbitant fees to transmit the channels (sometimes as much as \$4,000 per month) is contrary to the spirit, if not the letter, of state and federal law. If state or federal law requires channels to be provided and the cable operators refuse to do so unless the local communities pay an arbitrary fee for transmission of the channels, then the cable operators are not adhering to state or federal law.

Additionally, in the last few weeks, ACT has been contacted regarding a situation in a community in Missouri which ACT maintains is contrary to that state's franchising law. The

³ See [St. Louis Aldermen Fired Up at Charter; want Cable co. to Move Public Channels Back](http://www.stltoday.com/news/local/govt-and-politics/st-louis-aldermen-fired-up-at-charter-want-cable-co/article_a215677e-853d-11df-96e2-00127992bc8b.html). St. Louis Post Dispatch. July 1, 2010. http://www.stltoday.com/news/local/govt-and-politics/st-louis-aldermen-fired-up-at-charter-want-cable-co/article_a215677e-853d-11df-96e2-00127992bc8b.html

local government desires to regain its Public Access channel which was closed down due to lack of funding for the nonprofit that was managing it. Missouri law lays out the provision that for a community to acquire a channel it must notify the operator that it intends to substantially program that channel. This notification must be done 120 days in advance of the receipt of the channel. Charter has responded to the local government that it must enter into a Memorandum of Understanding (MOU). This MOU would set conditions by Charter on the local government for the use of that channel in what would amount to a pseudo franchise agreement. There is no such provision in Missouri statewide franchising law that would require a local government to enter into a MOU, the only provision for obtaining a channel is the 120 day substantial use notification.

PEG Access Television Closures in California

As further evidence of animosity toward PEG access television, shortly after California passed the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), the three companies engaged in this merger/acquisition (Charter, Comcast and Time Warner) shuttered 40 Public access operations in California. These operations had been managed by these companies under the franchise agreements that had existed. DIVCA did not provide that they continued to be managed under the terms to which the companies had previously agreed. Attachment A is a list of communities that had their Public access facilities closed by the three companies. Of these cities, ACT Commenters only knows of one city that has been able to assume the Public Access management and that is Long Beach, California. These Public Access stations represent an

infrastructure that has proven difficult, if not impossible, to replicate and certainly many of these Public Access operations had served their communities for several decades.

For the ACT Commenters, these closures represent another issue; that the various cable operators will not meet the public interest as demonstrated by community needs ascertainment, unless absolutely forced to do so. And these closures stand in stark contrast to Comcast's statement in its application that "[i]n every transaction we have over-delivered on our public interest commitments."⁴

Local Franchise Negotiations Already Difficult

For the past year, ACT has been following cable franchising events in the state of Minnesota, a state that will become in large part, Midwest Cable in the Comcast's spin-off systems. It has been reported to ACT that Comcast is attempting to reduce PEG access support fees by as much as 90% in some instances and cut the number of PEG channels by as much as 50%.

The significance of these hard ball negotiations is that it pits Comcast, with its unlimited legal resources, against small communities with limited legal resources. Another thing that makes these particular negotiations significant is that at least one community has chosen to take the formal route to franchise negotiations and at least several others are posed to do so.⁵ This was highly unusual in the past, but illustrative of the challenges that local governments have in

⁴ See Statement of David Cohen, Executive Vice President and Chief Diversity Officer in Open Internet, regarding the Comcast-Time Warner merger, <http://corporate.comcast.com/comcast-voices/comcast-and-time-warner-announce-merger-detail-public-interest-benefits-and-undertakings>

⁵ Formal negotiations require an administrative hearing, even a formal court proceeding, as opposed to informal negotiations that are conducted much like a business negotiation. Formal negotiations are rigorous and expensive and municipalities typically do everything they can to avoid this procedure.

negotiations with an increasingly consolidated industry. Such heavy-handed tactics by Comcast will only increase as Comcast seeks to expand its service territory making national precedent with regards to PEG a national strategy unchecked by other cable operators taking a kinder approach to this valuable local resource.

As has been our experience, the cable operators will, from time to time, strive to make an example of a community to lower the bar of their public interest commitment and then use that example to drive down negotiations in other communities. ACT Commenters takes the Minnesota situation very seriously and considers it warning of things to come in other communities across the country.

Even more important, these behaviors typically happen in smaller communities that do not have the resources to match the cable operator's resources when it comes to legal representation. The cable operators, and certainly Comcast and Charter, know this and understands that it can legally outmaneuver virtually any community into submission.

ACT Commenters are concerned what the landscape for cable negotiations at the local community level will look like given that once the merger, spin offs and acquisitions are complete, there will be two very large cable operators setting the tone and the bar for all cable franchise negotiation outcomes. In that environment, we fear PEG will not fare well unless there are strict conditions placed upon these transactions that concretely protect the public interest, our communities and PEG.

Ancillary Capacity for Online Viewer Engagement is an Important Support to PEG Channels as Television and Audience Needs Evolve

As required by the Federal Communications Commission as a Condition of the approval of the application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licensees and Transfer Control of Licensees (Comcast-NBC/Universal Merger), Comcast created and launched Project Open Voice, Comcast's pilot program to host Public, Educational, and Governmental ("PEG") content on its Video On Demand ("VOD") and new, custom-built Online platforms. Comcast's obligations to provide Project Open Voice have formally expired. Because Comcast has chosen to continue to support the communities chosen for the pilot program until the end of 2014, and additionally, Comcast has specifically stated that it will not commit to any further public interest requirements, such as Project Open Voice, as a condition of the current acquisition of Time Warner,⁶ ACT recognizes that Comcast may take the position that its voluntary continuance—albeit short term—of Project Open Voice should demonstrate their commitment to the public interest, and possibly serve to meet any public interest requirements as condition of the current merger. The results reported by Comcast of its Project Open Voice pilot showed an interest in video on demand for PEG programming.⁷ This is consistent with general changes in viewing habits shifting to access programming that is time-shifted by DVR playback, or via VOD.⁸ If this transaction proceeds,⁹ Comcast, Charter and

⁶ Joint statement by David L. Cohen, Executive Vice President, Comcast Corporation and Arthur T. Minson, Jr., Executive Vice President & Chief Financial Officer, Time Warner Cable Inc. to the U.S. Senate Committee on the Judiciary Hearing on "THE IMPACT OF THE COMCAST-TIME WARNER CABLE MERGER ON AMERICAN CONSUMERS" April 9, 2014.

⁷ Transaction Compliance Report to FCC, MB Docket No. 10-56, PEG Pilot Program Final Report and Evaluation, January 28, 2014

⁸ Nielsen Media: Cross Platform Report 2013 at <http://www.slideshare.net/mapleikon/crossplatform-report-march-2013-nielsen>. Overall the general population continues to dedicate an average of 4 hours and 39 minutes to viewing live TV each day, with the amount increased to 5 hours 4 minutes in 2013. At the same time, traditional television

Midwest Cable should continue its dedication to the public interest and distribution of local content by committing to providing Video On Demand and DVR functionality through its on-air scheduling capacity in every franchise area that has demonstrated this need through a community needs assessment¹⁰ for the remaining (or new) duration of each franchise agreement.

Further, and as ACT Commenter's general position, Comcast's VOD website platform is a complementary support to PEG channels--not a replacement; **the local content created for PEG channels through PEG centers are the local content that is provided to the web platform** with the purpose of supporting additional viewer engagement with their PEG channels. As is being demonstrated by local broadcast channels,¹¹ VOD and other online interactive content capacity are becoming a necessary component of a whole package supporting local PEG channels and programming as the television medium and audience needs continue to evolve.¹² Thus, as part of Comcast's, Charter's and Midwest Cable's ongoing commitment to the public interest and to ensure increasingly robust PEG channels, they should be required to explore the feasibility of expanding the Project Open Voice platform, and provide—upon a franchise

continues to be the primary viewing platform, with the percentage of time shifted viewing increased from 5% per week in 2008, to 8% in 2013.

⁹ This acquisition is part of the larger transaction before the Commission which includes sale a swaps of systems with Charter Communications, Inc. and the spin-off of Midwest Cable, LLC. To the extent the Commission applies conditions on the acquisition transaction; ACT submits that the conditions should also apply to the Charter and Midwest Cable transactions as well.

¹⁰ See SEC. 626. [47 U.S.C. 546] (a)(1)(A).

¹¹ ABC, CBS, NBC and FOX

¹² See Nielsen Media: Cross Platform Report 2011 at <http://www.slideshare.net/genarobardy/nielsen-crossplatform-report-q1-2011?related=1>, and Nielsen Media: Cross Platform Report 2013 compared between 2008 and 2013 at <http://www.slideshare.net/mapleaikon/crossplatform-report-march-2013-nielsen>. "Emerging Trends": "The heaviest media consumers do so across all platforms...however, less than one percent are not watching TV." (2011 Report). Younger Americans do spend less time watching TV than older Americans, but not significantly so. Overall the general population continues to dedicate an average of 4 hours and 39 minutes to viewing live TV each day, with the amount increased to 5 hours 4 minutes in 2013. time, traditional television continues to be the primary viewing platform, from 5% per week in 2008, to 8% in 2013.

authority's showing through the needs assessment¹³—this kind of platform to communities to support the PEG channels and maximize engagement with community programming produced in these communities.

To implement the Project Open Voice condition of the Comcast-NBC/Universal Merger, Comcast selected five communities for the pilot program: Fresno, CA; Hialeah, FL; Houston, TX; Peterborough, NH; and Philadelphia, PA to begin in October 2011. Comcast sought collaboration with the pilot communities to ensure that each platform launched in the required timeframe had broad support from the local content creators.¹⁴

Platform Pilot Total Description

While usage of both platforms steadily increased, the pilot websites also provided an easy to use video experience that serves as a portal to hyperlocal news and community information. Some of the trial communities have shown their support of the online platforms by creating local content, including almost 5,000 videos, thousands of blog posts, community calendar events, and other local interest resources. The communities generally have viewed Project Open Voice as a complement, **not a substitute**, to their stations' content and as an additional avenue for distribution of that content. Comcast plans to remain engaged with the pilot communities to ensure the continuing operation of the Online platforms. Although Comcast has agreed to support the operation and promotion of the websites in 2014 the ultimate goal is to transition control of the websites to the pilot communities by the end of the year. Comcast will also

¹³ Supra. Note 5.

¹⁴ Transaction Compliance Report to FCC, MB Docket No. 10-56, PEG Pilot Program Final Report and Evaluation, January 28, 2014

maintain the Project Open Voice VOD folder structure in the test markets for the same time period.¹⁵

The VOD component of the pilot program consists of dedicated content “folders” accessible only to Comcast VOD customers in each of the pilot communities. PEG and other local content selected by the local government is accessed by navigating to “Project Open Voice” branded folders on the Comcast VOD service. Unfortunately, several of the pilot communities are served by more than Comcast for cable/video services (i.e.: Cox, Charter, Time Warner) hence distribution is limited as only those customers with Comcast as their cable provider would be able to view the VOD content. Local governments designated the PEG providers that would select and deliver the PEG content to Comcast local VOD teams for encoding and placement on the service. Content providers in each of the designated areas worked with Comcast to ensure that content was uploaded and refreshed.¹⁶

The Online pilot program consists of custom-built websites that were branded with the name and theme chosen by each pilot community. The websites serve as portals for the communities, traditional PEG programmers, and other partners to create and manage virtual “channels” where they can post video content, along with other local interest information.

Although Comcast has hailed this as an innovative launch, its forays into the project reflect the prevailing industry trend for engaging viewers in a variety of modes with all types of programming. Versions of this same concept have been launched by PEG centers in numerous

¹⁵ *Ibid.* Page 2.

¹⁶ *Ibid.* Page 4.

communities across the country, enhancing the hyperlocal community programs with locally managed websites and youtube channels.¹⁷ Additionally, as another service enhancement offered by PEG centers, there are online archives of PEG/locally produced video content that are shared in local communities using PEG programming as a resource beyond its scheduled time on the PEG channels.¹⁸

Through Project Open Voice, Comcast has assisted in highlighting what PEG centers around the country have already recognized through providing direct services supporting their communities' local needs—that PEG channels need to have the same functionality and ancillary services for viewers to engage with content as local broadcasters are demonstrating is the most effective current best practice for programming and distributing local content. PEG centers are developing or seeking to develop the capacity to ensure their communities can reap the benefits of time-shifted viewing habits and using scheduled digital video recording (DVR) functionality as a means of maximizing the value and impact of PEG channels in their communities.¹⁹ Thus, if these transactions proceeds, Comcast, Charter and Midwest Cable should be conditioned to continue its dedication to the public interest and distribution of local content by committing to providing Video On Demand and DVR functionality through its on-air scheduling capacity in

¹⁷ Office of Cable Television, Washington D.C., www.oct.dc.gov (stream live and VOD); CityTV Santa Monica, CA, www.smgov.net/departments/citytv/ (stream live and VOD); LACityview 35, Los Angeles, CA, www.lacityview.org (stream live and VOD). You Tube local Government Channel, www.youtube.com/user/LocalGovernmentChan

¹⁸ PegMedia.org
<http://www.pegmedia.org/index.php?q=msvr/quicklist>
Internet Archive
https://archive.org/search.php?query=%28collection%3Acommunity_media%20OR%20mediatype%3Acommunity_media%29%20AND%20-mediatype%3Acollection&sort=-avg_rating%3B-num_reviews

¹⁹ See Examples of PEG access organizations streaming programming at: Worcester Cable Access Television <http://www.wccatv.com/video>; Surprise, Arizona Channel 11 <http://www.surpriseaz.gov/files/granicus/index.html>; Montgomery County Public School <http://www.montgomeryschoolsmd.org/departments/itv>.

every franchise area that has demonstrated this need through either an informal or formal community needs assessment²⁰ for the remaining (or new) duration of each franchise agreement.

In addition to looking for the means by which PEG viewers can conveniently enjoy community programming through time-shifted functionality, PEG centers are developing or seeking to develop the capacity to ensure their communities can providing viewers the means to access their local channels from multiple devices as streamed content as further means of maximizing the value and impact of PEG channels in their communities. The continued closure of PEG centers limits the availability of local content for the ancillary online platforms such as Project Open Voice that Comcast has piloted. Viewed from another side, those PEG centers which continue to exist do not necessarily have the funding or resources to create the avenues to additionally engage viewers with PEG content, particularly those online.²⁴ Thus, as part of Comcast's, Charter's and Midwest Cable's ongoing commitment to the public interest and to ensure increasingly robust PEG channels, they must also explore the feasibility of expanding the Project Open Voice platform, and provide this kind of platform to communities—upon their showing through the needs assessment—to support the PEG channels and maximize engagement with community programming produced in these communities.

Regardless of whether Comcast, Charter and Midwest Cable provides VOD and DVR functionality to PEG channels, or expands the web-based viewer enhancements for PEG channels, their VOD website platform based on Project Open Voice—if it is to be continued or expanded and offered to other communities nationwide—is a complementary support to PEG

²⁰ See Note 4.

²⁴One third of PEG access operations have budgets of \$200,000 per year or less.

channels; such web-based platforms cannot be considered a replacement for PEG channels, and **neither can they even be viable without the local content provided by the PEG centers.**

Comcast does not provide any of the content on its pilot web platforms; content is the result of efforts by the PEG centers that produce, schedule and assist viewers to find their local government, education and community programming. In many PEG centers, particularly those operating public access channels, programming results from hundreds of thousands of hours nationally of volunteer work substantially supported by PEG centers.²⁵

The results of Comcast's online pilot program as complementary to PEG channels continue to resound and indicate real support among content providers and consumers for online consumption of PEG and local interest content. PEG programming continues to be of local interest and should continue to be supported by companies such as Comcast. Although Comcast presented its Project Open Voice work and results as meeting substantial public interest requirements as conditioned by the Comcast/NBC Universal license exchange, Comcast's pilot program was for only five communities out of the nation's 19,000 cities, towns, and villages.²⁷ Support of five communities is equal to 1/1000th of a percent of the available communities that could have benefitted, or should benefit in the future.

As the television medium and audience needs continue to evolve, VOD and other online interactive content capacity is a valuable component of a whole package of ancillary services supporting local PEG channels and programming, including the means to ensure communities can reap the benefits of time-shifted programming, accessing local channels from multiple

²⁵ See link to DCTV Annual Report at <http://www.dctv.org/About-Us> showing a single year of volunteer time at over 180,000 hours. There are approximately 2,000 PEG operations nationwide.

²⁷ National League of Cities, www.nlc.org

devices as streamed content, and using scheduled digital video recording (DVR) functionality as a means of maximizing the value and impact of PEG channels in their communities. Thus, if these transactions are to proceed, ACT Commenters respectfully calls upon the Commission and Comcast/Charter/Midwest Cable to ensure increasingly robust PEG channels and centers to support programming. Specifically, they should continue their dedication to the public interest and distribution of local content by committing to providing Video On Demand and DVR functionality through its on-air scheduling capacity in every franchise area that has demonstrated this need through an informal or formal community needs assessment²⁸ for the remaining (or new) duration of each franchise agreement. And further, as part of their ongoing commitment to the public interest, they must also explore the feasibility of expanding the Project Open Voice platform, and provide this kind of platform to communities—upon their showing through the needs assessment—to support the PEG channels and maximize engagement with community programming produced in these communities affected by this series of transactions.

IV. Improper System Consolidation

ACT Commenters submit that the proposed systems transactions between Comcast, Time Warner , Charter and Midwest Cable, will result in an improper consolidation of cable subscribers and broadband subscribers. These subscribers will be effectively under the control of Comcast that will result in one company controlling the vast landscape of wired cable operations notwithstanding the artful hyperbole of Comcast and Charter to create ghost organizations and service contracts to suggest an increasing competitive landscape.

²⁸ See Note 4.

This transaction is a combination of five (5) inter-related contingent transactions: 1) the acquisition by Comcast of Time Warner (“Acquisition”), 2) sale of 1.4 million Comcast subscribers to Charter (“Sale”), 3) swapping of 1.6 million subscribers between Comcast and Charter (“Swap”), 4) creation of Midwest Cable comprising 2.5 million Comcast subscribers (“Spin-off”) and 5) creation of a new Charter holding company comprising the current Charter systems and Charter’s ownership of 33% of Midwest Cable (“New Charter”) (collectively referred to as the “Transaction(s)"). This proposed Transaction is unprecedented in the cable industry and most importantly **does not** involve arms-length transactions. In previous mergers and acquisitions before the Commission in years past, one thing the Commission could always count on was a willing-buyer and willing-seller type of transaction. That is not the case in all respects with this Transaction. Specifically the creation of Midwest Cable and the resulting equity ownership of Midwest Cable was not arms-length. Midwest Cable is being created by Comcast (with agreement from Charter) to house a new entity that will “own” 2.5 million Comcast subscribers with the precise intent of lowering the ownership of video subscribers to below the so-called 30% rule.

As described below, the Commission must seriously review the inter-locking control being exerted by Comcast and Charter in the operation of Midwest Cable and the apparent short term nature of Midwest Cable. If the Commission was to approve the Transactions as presented, ACT Commenters believe it is likely that within the next 2 to 4 years that Midwest Cable will be purchased by Charter and Comcast shareholders will become significant owners of New Charter. It is our understanding that current Comcast shareholders (including an approximate one-third (1/3) ownership by the Roberts Family Trust, which has significant refusal options) will own

two-thirds (2/3) of Midwest Cable at the beginning and if New Charter was to acquire Midwest Cable it would be reasonable to assume that Comcast shareholders including the Roberts' family could increase their ownership of New Charter from the proposed 13% to a much greater ownership percentage. If that ownership percentage approached or exceeded the current Liberty Media ownership of 26% of current Charter, it would be likely that those Comcast shareholders including the Roberts' family would be able to appoint or possibly control the Board of Directors of New Charter. Such a result would not only void the window-dressing of the 30% commitment but would actually increase the control by Comcast to include not only Time Warner but Charter as well. The Commission must prevent this potential by requiring **real** conditions on the interactions of New Charter and Comcast on the operations of Midwest Cable and any potential future buy-out of Midwest Cable by Comcast, New Charter or any affiliated entities. The Commission should consider requiring the ownership of Midwest Cable by Comcast shareholders and Charter to not be common stock but rather some sort of preferred stack that voids their ability to control the Board of Directors of Midwest Cable. Without some sort of insulation, it is likely that Comcast shareholders (including the Roberts' Family Trust) and directly by Charter will exert undue influence on Midwest Cable which is not in the public interest. Competition amongst traditional cable operators albeit not direct head-to-head competition must be preserved at a minimum which will not be the case if this Transaction is approved.

For the first time ACT Commenters can recall, a new cable company, Midwest Cable, is being created by two incumbent operators, Comcast and Charter. Let's not overlook the fact that Midwest Cable, LLC is apparently a wholly-owned subsidiary of Comcast where Comcast is

making decisions for Midwest Cable LLC that are in the best interest of Comcast business and shareholders. This Comcast subsidiary will be converted into Midwest Cable, Inc. that will assume all of the business decisions made by Comcast when it was Midwest Cable, LLC including the ownership, Board of Directors and management agreements. The new entity, Midwest Cable, Inc. will have its day-to-day operations managed by a one-third (1/3) owner under an undefined “Charter Service Agreement” (“CSA”) that was **not** negotiated by Midwest Cable but rather between Comcast and Charter. Midwest Cable is therefore **not** a willing-buyer of these services nor negotiated the CSA fee of 4.25% of all gross revenues plus reimbursable costs. This is not an arms-length transaction but one that will benefit the business and shareholder interests of Comcast and New Charter.

Of particular concern to ACT Commenters will be the ability of New Charter to control the day-to-day operations of Midwest Cable with respect to rates, marketing, franchise renewal and PEG operations and funding. Assuming New Charter is able to impart its “negative” attitude towards PEG operations and funding, the public will not be served in the diminished role Charter has imparted towards PEG (as more fully described in these comments). At a minimum, the Commission must break the day-to-day management stranglehold that New Charter will have over Midwest Cable if Midwest Cable is allowed to be an independent fifth-largest cable operator. This means that the Commission must require that Comcast and New Charter allow Midwest Cable to renegotiate the terms of the CSA and to accept or reject all of the terms of that proposed CSA.²⁹ It will be important to require as a condition that Board of Directors members appointed by Comcast and Charter be excluded from the final Board approval of a revised CSA as on the surface it appears that they would have a direct conflict of interest.

²⁹ See Comcast 8-K filed on April 28, 2014, Exhibit 2.1, Annex A and Annex 1.

While no one can predict the future, consider the implications of a Commission approval of this Transaction. The Commission would be blessing a limit of no more than 30% of the video households and blessing a “spin-off” concept whereby shareholders, not the company, will effectuate the reductions necessary to fall under the 30% limit. So what happens in a few years when Comcast decides to purchase Cox, Bighthouse or any other large MSO cable company? Comcast cherry-picks the DMAs that they want to become part of Comcast and spins-off current and/or acquired systems into Midwest Cable II and includes New Charter as the day-to-day manager in that spin-off. Comcast argues for Commission precedent in Midwest Cable LLC regarding Midwest Cable II. As part of the new acquisition, New Charter then proposes to purchase all of the Midwest Cable, Inc. and Midwest Cable II to be part of New Charter for which Comcast shareholders (including the Roberts’ Family Trust) secures additional ownership of New Charter. Again Comcast and New Charter cite Commission precedent of the current Transaction. What has heretofore been a traditional cable industry of five to six large MSOs has been transformed into one massive horizontally integrated company, Comcast, with significant ownership of the number two company, New Charter (which will be below the 30% threshold) and virtually no other large MSOs. No matter how much lipstick you put on this pig, it is still a pig. The Commission must prevent this “smoke and mirrors” approach as it reviews the public interest findings and the conditions it may seek if the Transaction is allowed to proceed.

Without these specific recommended conditions, ACT Commenters submit that this three party (Comcast, Charter and Midwest Cable) is nothing more than a shell game of trying to see where the ball is (ultimate control of each entity) and will potentially allow Comcast to have significant

if not total control of all three entities. If the Commission does not accept these conditions, ACT Commenters recommend that the Commission should reject the Transactions as not being in the public interest.

V. CONCLUSION

Public, Educational and Government (PEG) access television has served the local public interest for over fifty years. This public interest includes providing local government transparency, educational programming, nonprofit entity programming and opportunities for free speech and political discourse. Additionally, PEG access television provides state and federal government entities tens of millions of dollars in free air time each year.

Regardless of the millions of hours of community programming provided by PEG access television, and the critical role it plays in keeping communities informed, PEG access has suffered setbacks to include loss of funding, channels and capabilities.

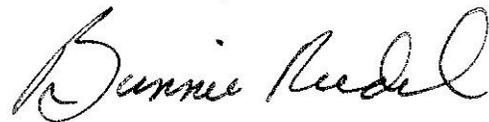
ACT and ACT Commenters recognize that the proposed transactions will mean greater negative PEG practices (particularly by Comcast and Charter) and will likely become more widely spread in those States that become new Comcast, Charter or the Charter controlled Midwest Cable territories.

We request that the Commission protect PEG access television by rejecting the proposed transaction as not being in the public interest or conditioning the proposed transactions on curing the various problems we outline in these comments with significant conditions to protect PEG and prevent further consolidation of the traditional cable industry.

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Consolidated Opposition to Comcast Appeals of Local Rate Orders, and, to the best of my personal knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,



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EXECUTIVE DIRECTOR

August 25, 2014

ATTACHMENT A

PEG ACCESS CLOSURES IN CALIFORNIA

Public Access Los Angeles, CA Time-Warner/Charter (12 facilities)

Public Access Long Beach, CA Charter

Public Access Ojai, CA Time-Warner

Public Access Oxnard, CA Time-Warner

Public Access Glendale, CA Charter

Public Access El Segundo, CA Time-Warner

Public Access Gardena, CA Time-Warner

Public Access Hawthorne, CA Time-Warner

Public Access Lawndale, CA Time-Warner

Public Access Malibu, CA Charter

Public Access Huntington Beach, CA Time-Warner

Public Access Garden Grove, CA Time-Warner

Public Access Fountain Valley, CA Time-Warner

Public Access Westminster, CA Time-Warner

Public Access Stanton, CA Time-Warner

Public Access Carlsbad, CA Time-Warner

Public Access Richmond, CA Comcast

Public Access San Pablo, CA Comcast

Public Access El Cerrito, CA Comcast

Public Access Kensington, CA Comcast

Public Access Albany, CA Comcast

Public Access Alameda County,CA (portions) Comcast

Public Access Santa Ana, CA Time-Warner

Public & Education Puente Hills, CA Time-Warner

Public Access Hacienda Heights, CA Time-Warner

Public Access City of Industry, CA Time-Warner

Public Access Valinda, CA Time-Warner

Public Access Bassett, CA Time-Warner

Public Access Avocado Heights, CA Time-Warner

Public Access North & South Whittier, CA Time-Warner

Public Access Buena Park,CA. Time-Warner

Public Access Los Alamitos,CA. Time-Warner

Public Access Compton, CA. Time-Warner

Public Access Carson, CA. Time-Warner

Public Access Baldwin Park,CA Time-Warner

Public Access Tustin, CA Time-Warner

Public Access Costa Mesa, CA Time-Warner

Public Access Placentia, CA Time-Warner

Public Access Fullerton, CA Time-Warner