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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2009

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

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PART 9

PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS TO CABLE TELEVISION

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2009

WEDNESDAY, SEPTEMBER 17, 2008.

PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS TO CABLE TELEVISION

WITNESSES

MONICA SHAH DESAI, CHIEF OF THE MEDIA BUREAU, FEDERAL COMMUNICATIONS COMMISSION

BARBARA POPOVIC, EXECUTIVE DIRECTOR, CHICAGO ACCESS CORPORATION, ON BEHALF OF THE ALLIANCE FOR COMMUNITY MEDIA AND THE ALLIANCE FOR COMMUNICATIONS DEMOCRACY

HOWARD SYMONS, PARTNER, MINTZ LEVIN, ON BEHALF OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

MICHAEL MAX KNOBBE, EXECUTIVE DIRECTOR, BRONXNET

Mr. SERRANO. Good morning to all. The bells indicate that there are votes, as there always are. So what we are going to do is we are going to make our opening statements, and then we will go vote, and then we will be back. And let's just hope that the folks across the way today are not in the mood they were in yesterday where there might be a motion to adjourn every 5 minutes. But that is democracy at its best.

The subcommittee will come to order.

And we want to welcome you. Mr. Kirk is acting as the ranking member today in place of Mr. Regula. And I have to make a wiseguy comment that maybe it is a picture of things to come.

I welcome you to this hearing of the Financial Services and General Government Subcommittee. Today, the subcommittee will hear testimony on the subject of public, educational, and governmental, or PEG, access to cable television. Our witnesses represent a broad range of knowledge and perspectives on this topic, so we look forward to a spirited and informative discussion.

By way of background, under Federal law, local entities may grant franchises to cable operators and may require the designation of PEG channels as part of these franchising agreements. These local franchising authorities may also require cable operators to provide services, facilities, or equipment in support of PEG broadcasting. The intent of this Federal law is to provide the opportunity for cable operators to give back to the community in exchange for being granted the valuable right to serve that community and to use public rights of way to deliver those services.

By granting this authority, Congress recognized that PEG programming is in the public interest and essential to our communities as an outlet for free speech, local information and opinions,

and emergency communications. PEG supports our democratic ideals by helping to develop a well-informed and well-educated society. It benefits all of us to support and encourage PEG programming.

Unfortunately, it is not always easy for a PEG broadcaster to get on the air, and at times, it is not easy for a viewer to view PEG programs. There appear to be many reasons for this.

Technological and financial challenges for PEG broadcasters are often imposing, and new technical challenges are becoming apparent as we move toward 100 percent digital television. Barriers to PEG programming may be related to whether or not cable operators continue to make PEG channels as accessible as they have in the past.

For example, in some areas of the country, cable providers have proposed to move PEG channels to digital format well in advance of next February's transition date, which mean that PEG channels may be harder to find on a channel dial. And viewers who still rely on analog signals must rent or buy converter equipment now if they want to continue to receive the same level of access to PEG channels.

As another example, AT&T is offering all PEG channels at a single channel location, where they would be accessed through a menu using Web-based technology. Many concerns have been raised that this approach makes the channels more difficult to view, offers inferior quality and results in the loss of features such as closed captioning.

I want the subcommittee to know that AT&T was invited to testify at this hearing, but they told us less than a week ago that they couldn't find someone to testify. I, frankly, find it incredible and disappointing that a company the size and stature of AT&T can't find or won't find a suitable witness for a hearing of this important public policy issue. AT&T's recent actions relating to PEG channels go to the heart of many of the concerns that will be raised today.

Let the record show that I consider their decision not to send a witness to be indicative of the company's apparent disregard of the importance of PEG to local communities.

Regulatory issues have also raised issues relating to support for PEG access. Recent Federal Communications Commission franchising rules affect the terms by which local franchising authorities can establish cable operator obligations for PEG programming. These rules could make it harder, for example, to require cable operators to help local government or colleges operate TV production facilities. I look forward to hearing what the FCC and other witnesses have to say about these recent regulatory actions.

Finally, I think it is extremely important to note the current trend away from local authority over cable franchises and towards statewide franchise laws. These statewide laws in many cases override local franchising authorities, including the franchise agreements relating to PEG. As a result, cable operators may reduce their support for PEG or even close PEG facilities. In fact, a recent survey by the Alliance for Community Media indicates that many PEG centers have experienced reductions in funding and other forms of support under statewide franchising. This is troubling, as I am sympathetic to the importance of local community influence

over PEG access requirements. These local authorities have the most thorough understanding of the needs of their communities and of how PEG can help address those needs.

With that, I would like to recognize my friend, Mr. Kirk. In fact, I should recognize him in Espanol.

[Speaking in Spanish.]

Mr. KIRK. I want to thank my friend for having this hearing. It is great to work with him, and I hope it is the shape of things to come.

Although I will criticize, his accent sounds [speaking in Spanish]. So if you can just fix some of your accent, I think your Spanish would be that much better, Mr. Chairman.

Mr. SERRANO. Do you want me to sing it for you?

Mr. KIRK. On this hearing, also, if there was any thought by AT&T that the Republican member here at the hearing would help them out, let me disabuse them now. I spoke with a local reporter, and after talking to some of my communities, my view on AT&T was: And the horse you rode in on, because I think their proposal falls way short of the mark. And I am very glad that Barbara Popovic is here representing a number of our communities, and Howard Symons is here as a local team.

We need cable television for more than watching the White Sox beat the Yankees.

Mr. SERRANO. This relationship is not getting off to a good start.

Mr. KIRK. But I understand that something is wrong with the world when McCain is up and so are the Cubs at this point.

Mr. SERRANO. Yes.

Mr. KIRK. On this, I think this committee should take some action on this. It does appear that AT&T is in direct violation of Illinois law. And so whether it is in Springfield or in Washington, we should fix this to make sure that there is a very convenient place, especially for our seniors, to find what is happening in their local community. And especially, this is something so important that I breeze through local access cable, like everyone else does, except when we are doing a zoning or other issue related to my neighborhood, and then we are locked on this, like everyone else, and to make sure that people can rapidly participate in their local democracy is what this is all about.

I will say, on another note, I am very surprised we are holding a hearing on this topic in this committee at this time. The Congress has taken itself out of the game of conducting legitimate oversight over what is the number one story in the country right now, which is the bailout of several major financial institutions in the country with next to no oversight by the elected representatives of the American people.

We have now seen a bailout of Bear Stearns at $29 billion; Fannie Mae and Freddie Mac at $200 billion; AIG at $85 billion; and a pending vote in the House later on tomorrow of the Detroit automakers at $25 billion. That is $339 billion going out of the Treasury with no oversight by the elected representatives of the American people.

This is a Congress controlled by Democrats, and yet the Bush administration is in complete control with almost no oversight. And we have a real problem in this House. Much of this, many of these

subjects are governed by the Ways and Means Committee, and yet we have a politically crippled chairman who may or may not be able to get anything through the House given his growing legal problems, and a Senate Appropriations chairman that frankly is not physically up to the job anymore.

And so I look at the work of our committee, and I see a number of words: apathetic, benumbed, comatose, dormant, lackadaisical, lethargic, slumberous. I particularly like hebetate. But I might describe the best word for our committee is torpid, which is physically and mentally inactive.

The Appropriations Committee has not done this small amount of work since fiscal year 1946, of doing no major bill of any kind by this date. It is amazing that a political party, the Democratic party, that would seek to have some sort of oversight on the number one issue facing the American people, and yet it is utterly inactive with $339 billion going out of the Treasury. The number one goal, I think, of the Federal Government is to defend the dollar, and I don't see a defense of the dollar by the executive branch or an utterly inactive legislative branch.

It would seem, with how Ways and Means is crippled and how Senate Appropriations is crippled, that two very capable leaders, the chairman and his chairman, who are not crippled, ought to lead the charge of having legislative branch oversight over what is going on.

So, Mr. Chairman, I am completely with you on nailing AT&T over what they are doing over public access. But I would hope that very rapidly, since you are completely capable of this job and this is the Financial Services Subcommittee and hundreds of billions of dollars are going out the door, that we move off our procurate stance here and get on with the job of legislative oversight over financial services.

I yield back.

Mr. SERRANO. I thank the gentleman for his statement. I thank him for the words he just taught me. As you know, I don't know most of these words. English is a second language to me. That is something I share with President Bush.

Mr. KIRK. I think we should "edumicate" everyone.

Mr. SERRANO. We will go to take our vote, but you did bring up interesting issues. And you would be shocked that I am not shocked that you agree with us on this whole cable issue. You also may not be shocked that this subcommittee is trying to find out what role it plays in all of these bailouts. I suspect that some day we will have to pay for them. And so your concern is as legitimate as it can be.

I must say, however, in closing, that the largest problem we have with the lack of appropriations bills, which frustrates me—I mean, I didn't become a chairman not to get at least a pen from the President or a certificate for a bill. And I may not see that—is that a President who for years thought it was okay to spend money, and I agree with him, now in the last 2 years has decided to veto any bill that spends $1.50 on domestic programs. That is the number one reason why we don't have bills. And you and I look forward to next year and to the rest of this year, whatever is left of it, to ask those questions.

And one may say, well, as a Democrat you are supposed to answer him in a different way. No. I myself am asking my leadership, what role would this subcommittee and this committee take? Will it be like the war where we just print money in the basement?

Mr. KIRK. Right. My hope is that you——

Mr. SERRANO. And let me give you my most profound and most sarcastic comment of the week and one I have used for a while now: When a lady getting $60 a month for food stamps is singled out as being in that position because she cannot deal with her own personal responsibility, that is acceptable; when people rip us off for a couple hundred billion dollars, it is just a glitch in the economy.

Mr. KIRK. And my hope is that you haul the Chairman of the Securities and Exchange Commission and the Secretary of the Treasury before the committee that signs their paycheck.

Mr. SERRANO. And on that note, before we leave, this committee—and the staff behind you can clue you in on it—this committee found itself asking the SEC to take more money to hire more people to do the oversight. We have two agencies, the other one being the Consumer Product Safety Commission, telling us we really don't need any more money.

Mr. KIRK. You don't need to get me started on the incompetence of one of those officials.

Mr. SERRANO. We will go vote and we will return.

[Recess.]

Mr. SERRANO. We apologize for the interruptions. It is democracy at its best and the final days of this session, so it is going to be like that for a while.

We have a lot of material to cover and many people to hear from during this hearing, so I ask that each witness strictly observe the 5-minute maximum for their opening statements. Your complete written statement will be submitted for the record.

We will hear first from Monica Desai—I want to make sure that we are pronouncing names correctly here; I hate it when people call me "Serriano"—chief of the media bureau of the Federal Communications Commission.

Then I will recognize Barbara Popovic, executive director of the Chicago Access Network, who is testifying on behalf of the Alliance for Community Media.

The third witness to testify will be Howard Symons, a partner at the law firm of Mintz Levin, who is testifying on behalf of the National Cable & Telecommunications Association.

And, finally, we will hear from Michael Max Knobbe, executive director of BronxNet, well situated within that fabulous 16th Congressional District in the Bronx, New York.

You are first.

Ms. DESAI. Good morning, Chairman Serrano, and members of the subcommittee. Thanks for inviting me here today to discuss public, educational and governmental access to cable television.

Promoting localism and diversity are two fundamental goals underlying the Commission's media policies. PEG access promotes both. The Commission recognizes the importance of PEG access in fostering choices for local and diverse programming in communities.

Sections 611 and 621 of the Communications Act allow local franchising authorities to require cable operators to set aside channels for public, educational or governmental use. PEG channels are permitted but not mandated by Federal law. Rather, the decision to require the carriage of PEG channels is one Congress left solely to the LFA.

The Commission's rules related to PEG access reflect the specific authority granted by the Communications Act. For example, Section 623 of the Communications Act requires cable systems to carry on their basic service tier any PEG channels required by the LFA. Section 76.901 of the Commission's rules defines the basic service tier as including, among other signals, any PEG programming required by an LFA.

Under the Communications Act, LFAs may impose reasonable franchise obligations to support PEG. Under Section 611, an LFA may require that channel capacity be designated for PEG use; may require rules and procedures for the use of their PEG channels; and may enforce any franchise requirements regarding the providing or use of the channel capacity which relate to PEG.

The Communications Act provides that the franchise fees paid by a cable operator for any given system may not exceed 5 percent of gross revenues. In Section 622, Congress specifically excluded from the term "franchise fee" any capital costs which are required by the franchise to be incurred by the cable operator for public educational or governmental access facilities.

Accordingly, capital cost payments, such as facilities and equipment, are not subject to the 5 percent franchise fee cap, while noncapital costs, such as salaries and operating costs, by statute must be included in calculating the fee.

The Communications Act permits LFAs to require adequate assurance that cable operators will provide adequate PEG access channel capacity, facilities, or financial support. The Commission has concluded that completely duplicative PEG and I–NET requirements imposed by the LFA pursuant to this authority would be unreasonable. The Commission has also found it would be unreasonable for an LFA to require a new entrant to provide PEG support in excess of the incumbent cable operator's obligations.

The Commission has not adopted standardized terms for PEG channels, agreeing with LFAs that they are free to establish their own requirements for PEG, as set forth in the Act.

The Commission has continued to monitor cable franchising, and especially the increased adoption of franchising laws at the State level. The Communications Act requires cable operators to offer local broadcast channels and PEG channels on the basic service tier. Under Section 623, the basic service tier must include PEG access programming required by the franchisee to be provided to subscribers. The Commission's regulations state that the basic service tier shall include, at a minimum, all local broadcasting signals and any PEG programming required by the franchise to be carried on the basic tier. It has come to our attention that some programmers are moving PEG channels to a digital tier or are treating them as on-demand channels. We are concerned by these practices. We believe that placing PEG channels on any tier other than the basic service tier may be a violation of the statute.

Subjecting consumers to additional burdens to watch their PEG channels defeats the purpose of the basic service tier. We believe it is important to ensure that consumers are able to get access equally to all channels belonging on the basic service tier, and that this should be the case regardless of what type of system the channels are being carried on.

In conclusion, the Commission recognizes the importance of PEG programming. We will continue to enforce the statutory framework Congress enacted to allow adequate PEG support without overburdening cable operators and their customers. We look forward to working with the PEG community to address any challenges to PEG access.

I look forward to answering your questions.

[The information follows:]

Statement
Of

Monica Shah Desai
Chief of the Media Bureau
Federal Communications Commission

Before the Subcommittee on Financial Services and General Government, Committee on Appropriations U.S. House of Representatives

September 17, 2008

Good morning Chairman Serrano and Members of the Subcommittee. Thank you for inviting me here today to discuss public, educational, and governmental ("PEG") access to cable television.

INTRODUCTION

Promoting localism and diversity are two fundamental goals underlying the Commission's media policies. PEG access promotes both. PEG programming is a vital medium for local communities. The Commission recognizes the importance of PEG access in fostering choices for local and diverse programming in communities. The Commission annually seeks information about the pervasiveness and use of PEG channels.

Sections 611 and 621 of the Communications Act allow local franchising authorities ("LFAs") to require cable operators to set aside channels for public, educational, or governmental use. PEG channels are permitted, but not mandated by federal law. Rather, the decision to require the carriage of PEG channels is one made solely by the LFA.

The Commission's rules related to PEG access reflect the specific authority granted by the Communications Act. For example, Section 623 of the Communications Act requires cable systems to carry, on their basic service tier, any PEG channels required by the LFA. Section 76.901 of the Commission's rules defines the basic service tier as including, among other signals, any PEG programming required by an LFA.

STATUTORY PEG ACCESS

Under the Communications Act, LFAs may impose reasonable franchise obligations to support PEG. Under Section 611, an LFA may require that channel capacity be designated for public, educational, or governmental use, may require rules and procedures for the use of the PEG channels, and may enforce any franchise requirements regarding the providing or use of the channel capacity which relate to PEG.[1]

[1] 47 U.S.C. 531.

The Communications Act provides that the franchise fees paid by a cable operator for any given system may not exceed five percent of gross revenues. In Section 622(g)(2)(C), Congress specifically excluded from the term "franchise fee" any "*capital costs* which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities." Accordingly, capital cost payments, such as facilities and equipment, are not subject to the 5 percent franchise fee cap,[2] whilenon-capital costs, such as salaries and operating costs, must be included in calculating the fee.

The Communications Act permits LFAs to require "adequate" assurance that cable operators will provide "adequate" PEG access channel capacity, facilities, or financial support.[3] The Commission has concluded that completely duplicative PEG and I-NET requirements imposed by the LFA pursuant to this authority would be unreasonable. The Commission also has found it would be unreasonable for an LFA to require a new entrant to provide PEG support in excess of the incumbent cable operator's obligations.

The Commission has not adopted standardized terms for PEG channels, agreeing with LFAs that they are free to establish their own requirements for PEG, as set forth in the Act.

UPDATES

The Commission has continued to monitor cable franchising, and especially the increased adoption of franchising laws at the state level. The Communications Act requires cable operators to offer local broadcast channels and PEG channels on the basic service tier. Under Section 623, the basic service tier must include "PEG access programming required by the franchisee to be provided to subscribers." The Commission's regulations state that the basic service tier shall include at a minimum all local broadcast signals and any PEG programming required by the franchise to be carried on

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[2] *See, e.g., City of Bowie, Maryland,* 14 FCC Rcd 9596 (CSB, 1999). *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2006), *aff'd Alliance for Cmty. Media v. FCC*, 529 F.3d 763 (6th Cir. 2008). *See also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Second Report and Order, 22 FCC Rcd 19633 (2007).

[3] 47 U.S.C. 541(a)(4)(B).

the basic tier. It has come to our attention that some programmers are moving PEG channels to a digital tier, or are treating them as on-demand channels. We are concerned by these practices. We believe that placing PEG channels on any tier other than the basic service tier may be a violation of the statute, which requires that PEG access programming be placed on the basic service tier. Subjecting consumers to additional burdens to watch their PEG channels defeats the purpose of the basic service tier. We believe it is important to ensure that consumers are able to get access equally to all channels belonging on the basic service tier, and that this should be the case regardless of what type of system the channels are being carried on.

CONCLUSION

In conclusion, the Commission recognizes the importance of PEG programming. We will continue to enforce the statutory scheme Congress enacted, to allow adequate PEG support without overburdening cable operators and their customers. We look forward to working with the PEG community to address any challenges to PEG access. I look forward to answering your questions.

Mr. SERRANO. Thank you.

Ms. Popovic.

Ms. POPOVIC. Chairman Serrano, thank you for the invitation to come here today.

Representative Kirk, I really appreciate your comments earlier and your work on behalf of the residents of Illinois.

I am Barbara Popovic, executive director of CAN TV in Chicago, and I am representing Alliance for Community Media and Alliance for Communications Democracy today. These are two national organizations that are devoted to public educational and government access, PEG access.

I have been privileged to work through the years with public officials, with the vision to recognize the importance of giving voice to the local communities.

So I particularly want to thank you, Chairman Serrano, because I know you have that vision in BronxNet, with the creation of BronxNet.

PEG access exists because of regulations that stem from the 1948 Cable Act, but the FCC's video franchising orders green light a major regulatory shift while failing to safeguard PEG, ignoring localism and diversity goals mandated by Congress. We are addressing this issue today because, as appropriators, the FCC's role in this is your business.

The FCC's video franchising proceeding contributed to passage of regressive state laws around the Nation. These laws strip away local authority, weaken consumer protection, limit buildout, and undermine PEG access. As cable operators opt into these State laws, we are seeing a reduction in preexisting PEG obligations of incumbents, like studio closures in Michigan, Indiana, and other States.

After 8 years of doing local programming, Sheriff David Lane of Porter County, Indiana had his program unceremoniously shut down by Comcast when it closed all of its northern Indiana studios after passage of Indiana State law. Sheriff Lane said, "I've always thought that the organizations with whom we partnered, the nonprofits that are out there every day trying to improve the quality of life in northern Indiana, lost the most when we lost our program."

The need for local channels hasn't changed. If anything, the need is stronger than ever. The FCC knows that. It has held hearings all over the country about the lack of localism in broadcast television. But take a walk down Main Street America. In many towns, you will find that the only local television channel is a PEG channel. It is the go-to place for emergency alerts, community festivals, health education, school closing information, and local election debates.

I am disappointed AT&T didn't show up here today as a witness, because the public programming they are carrying is marginalized on its U-Verse system. Congressional Research Services' September 5th report states that AT&T has chosen not to make PEG programming available to subscribers in the same fashion that it makes commercial programming available. Instead, AT&T treats PEG contents the same way it treats Internet traffic. The CRS report details the deficiencies of AT&T's PEG product. Suffice it to say

AT&T consigns PEG channels to a format that is inferior to commercial channels in virtually every way that matters to a viewer.

AT&T representatives have repeatedly acknowledged these deficiencies, but claim the PEG product is a work in progress. So why wait?

My written testimony includes an independent engineering study that shows PEG channels can be treated equally on systems like AT&T's with readily available technology. Where the laws exist to prevent unequal treatment of PEG, the only reason it continues is government's failure to say three simple words: Just do it.

Here is a guide being distributed in the Chicago suburbs, and there are about 350, close to 400 channels here, and you don't see a single listing of a PEG channel. There will be no PEG programming in any electronic program guide. And despite the fact that Illinois law prohibits this from happening, Representative Kirk, in your district, the shows on hurricane relief that you are working on, the programs that your local constituents do, gone, nowhere; no one will find them.

The need—excuse me. The bottom line, AT&T, the company that promotes choice in cable franchising, is giving viewers no choice when it comes to PEG. This is the 21st century, and there are great technological advancements with the potential to serve the public good. No one can convince me that the only way we can see technological advancement in this country is to leave the people behind.

Chairman Serrano and members of the committee, I speak to you as appropriators. You fuel the engine that drives our government. And when it comes to PEG access, we are headed in the wrong direction. We urge this committee to prohibit funds from being used to implement or enforce the FCC's video franchising orders, compel the FCC to reconsider these orders in light of the adverse effect on PEG, and ask the GAO to conduct a study to get to the bottom of the harm that has come to PEG from recent regulatory changes.

My written testimony includes steps we urge Congress to take to help keep PEG healthy in the future. Thank you for the opportunity to testify.

[The information follows:]

BEFORE

UNITED STATES HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

Hearing on Public, Educational, and Governmental (PEG) Access for Cable Television

Testimony of

BARBARA POPOVIC

Executive Director

CHICAGO ACCESS NETWORK TELEVISION (CAN TV),

CHICAGO, ILLINOIS

on behalf of

The Alliance for Community Media &

Alliance for Communications Democracy

SEPTEMBER 17, 2008, 10:00 A.M.

ROOM 2220, RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

INTRODUCTION

Good morning, Chairman Serrano and Members of the Committee. I am Barbara Popovic, Executive Director of Chicago Access Network Television ("CAN TV") in Chicago, Illinois. Through CAN TV, government officials, educators, and thousands of local nonprofit groups and residents connect with residents in need of jobs and educational opportunities, legal advice, immigration information, health assistance, and housing through five local, noncommercial cable channels.

Thank you for the opportunity to testify on behalf of two national organizations, Alliance for Community Media ("ACM") and Alliance for Communications Democracy ("ACD"). These organizations are devoted to promoting, advancing and protecting the interests of public, educational and government ("PEG") access centers across the nation. ACM is a national membership organization representing 3,000 PEG centers that carry 20,000 hours each week of new programs from local governments, schools, health and jobs organizations, social service agencies, and local residents. ACD preserves and strengthens community access to media through participation in FCC and court proceedings affecting PEG access. Colleagues from Michigan, Ohio, Florida, New York, Maryland, Virginia and Washington State, are joining me at the hearing today. DCTV, Washington DC's local PEG center, is taping today's proceedings for distribution around the country.

I've been privileged to work through the years with public officials with the vision to recognize the importance of giving voice to the local community. I'm particularly honored to accept this invitation from Chairman Serrano, who upheld that vision in the Bronx through the creation of BronxNet. Representative Serrano, people throughout the country appreciate your support for PEG access, and your vigilance on this issue.

The right to free speech and free expression, the inclusion of a diversity of viewpoints and ideas, and the focus on the local community have been the hallmark of PEG access for over 30 years. But government and industry actions over the past three years are rapidly eroding protections for PEG, putting community stations at risk and threatening the public's participation in and use of PEG training, facilities and channels. I am here today to brief you on the threats that PEG access currently faces and to urge you to take a stand on behalf of the public to use any

means available to you to stop this harm and to protect the future health and viability of PEG access now and in the future.

PEG Access Advances Congressional Goals to Foster Localism and Diversity

PEG access, as defined in the 1984 Cable Act ("the Cable Act"), advances Congress' goal of providing a wide diversity of information and services by responding to the needs and interests of the local community. The Cable Act places PEG Access under the stewardship of local franchising authorities, with mechanisms for financial support and channel capacity for the public. Most successful PEG operations have resulted from local ordinances and agreements, forging partnerships among local government, local cable companies, and the local community.

The role of PEG access in developing technological and media literacy has never been more important than today. PEG centers provide constructive outlets for community youth to learn media skills. Seniors actively create programming on a range of issues. Nonprofits are given an outlet to reach clients in need of assistance. PEG channels provide a platform for civic debate to resolve local conflicts. And during local elections, PEG channels provide opportunities for candidates to address the public directly and fully, without being limited to a 30-second sound bite.

Thousands of hours of new, original content flow through PEG channels every day throughout the country, bringing local information into the home that would not otherwise be seen. PEG channels welcome community members, politicians, preachers, experts, educators, and artists. Participants aren't screened and selected by management or advertising interests; they participate because it's their community and their channels.

The role of PEG channels is particularly important at a time when research shows that less than ½ of 1% of programming on commercial media is devoted to local public affairs. The commitment of PEG programmers to promoting social services, arts and civic events, public safety, and other issues close to home, demonstrates what is possible when the community is given the opportunity to participate in television media. The democratic values that form the foundation of the PEG access mission merit preservation by government, industry, and individuals alike.

Legislative Changes Harming PEG Access

Since 2005, state video franchise laws advanced by telecommunications companies entering the video business have passed in 19 states. After federal video franchise legislation stalled in the Senate in 2006, telecommunications giant AT&T combined its lobbying forces and a major advertising blitz to roll out a strategy in the states designed to cut local governments out of cable franchising, erode consumer protections, limit build-out requirements and undermine PEG access. Already entrenched in many state legislatures, AT&T dangled the "carrot" of increased competition and lower rates while wielding the "stick" of legislation that gutted local public interest obligations and cleared the way for AT&T to gain a fast track into the market.

While AT&T and Verizon were pushing for a new regulatory scheme based on one-stop-shopping at the federal or state level, Verizon nonetheless continued negotiating local franchises. Over a year ago, Verizon already had more than 800 local franchises and growing, and it got them the same way that incumbent cable operators did -- by sitting down with the local community. Verizon's agreements with the City of New York and the access centers in its boroughs show how a company can partner with the city and community to serve the public interest, while, at the same time, providing the benefits of increased competition with incumbent cable operators.

That represents a stark contrast to the outcome in the majority of states served by AT&T. In Illinois, AT&T put an army of lobbyists on the ground, saturated television with anti-cable ads, and funded astro turf groups to push for state legislation. The pattern was similar in many other states. The resulting legislation in most of those states were state video franchise laws that strip away local authority, weaken consumer protections and enforcement, and harm PEG access in a variety of ways. While determined to avoid local franchising by seeking legislation at the state level, AT&T, with 549,000 subscribers, lags far behind Verizon's 1.4 million subscribers, obtained largely through the local franchising process.

Having seen the problems with legislation in other states, the Illinois Attorney General and public interest advocates got involved early in Illinois, and the General Assembly ultimately passed a bill that prevents AT&T from usurping consumer rights and includes protections for

PEG access. But AT&T is defying Illinois law by segregating PEG access into a video application with inferior signal quality and functionality compared to other channels.[1]

New state laws in Florida, Wisconsin, Ohio, Missouri, Tennessee and other states cause damage to PEG through funding reductions, substandard channel quality and functionality, channel capacity cut backs, channel slamming to a less accessible location, new costs for carriage of PEG channels, and PEG studio closures that deprive the local community of its only production resource. In many states, incumbent cable operators have quickly taken advantage of these new state laws, opting out of their local franchises and reducing their pre-existing PEG obligations.

Assessing the Damage

In May 2008, the Alliance for Community Media (ACM) initiated an online survey regarding the impact of new state video franchise laws on PEG operations.[2] Members of ACM and the National Association of Telecommunications Officers and Advisors (NATOA) from around the country participated in this survey.

The survey reveals that within a year or less of passage of state video franchise laws, many PEG centers have seen a negative impact on funding and operations, and a decrease in related services and benefits. In a number of those states, PEG funding completely sunsets after 3-5 years.

California has one of the more PEG "friendly" state laws. The language in that law was intended to "do no harm" to PEG access, including language that makes it clear that pre-existing PEG funding is to be continued. That didn't prevent Comcast from recently sending the City of Monterey a notification that will result in drastic funding reductions. For 10 years residents of the Monterey Peninsula have had the opportunity to learn about what is happening with local government agencies ranging from the Monterey City Council to the local water district. Local opinion leaders and nonprofits like Seaside Boys and Girls Club serving latchkey kids have been

[1] ILCS 21-601(c), Illinois Cable and Video Competition Act of 2007: The holder shall provide to subscribers public, education and government access channel capacity at equivalent visual and audio quality and equivalent functionality, from the viewing perspective of the subscriber, to that of commercial channels carried on the holder's basic cable or video service offerings or tiers without the need for any equipment other than the equipment necessary to receive the holder's basic cable or video service offerings or tiers.

[2] See Appendix A: *Assessing the Damage: Survey shows that state video franchise laws bring no rate relief while harming public benefits.*

able to reach viewers with local information. And the local "Your Town" program features hundreds of local nonprofit organizations. But this local community programming may be gone by the end of 2008.

According to the ACM survey results, there was a reduction in benefits to more than a quarter of respondents that had public cable drops in locations like libraries, schools and other public centers, and close to half of respondents in communities that had an Institutional Network connecting government facilities, educational institutions, and PEG facilities. Jan Berger of Miami Valley Communications Council in Centerville, Ohio, says, "We went from 62 cable drops in our cities' government and community center, schools, and fire and police stations to 9 cable drops. We are told that even these 9 cable drops will be taken from us soon."

Since the passage of state video franchise laws, PEG centers report reductions and threats to existing channels. Operating under recently enacted state laws, many new entrants and incumbents quickly took steps to limit PEG channel capacity and placement. Cable operators in a number of states are moving PEG channels to "digital only" tiers, decreasing accessibility and visibility and increasing costs for subscribers. And, in AT&T states, many laws not only reduce PEG funding support; they also impose new financial obligations on PEG centers and local governments by requiring that local governments and PEG centers purchase special hardware and pay significant monthly fees to deliver PEG channels to new state franchise service providers.

In a number of states, rigid nonrepeat programming requirements are applied to PEG channels. If a community cannot meet the imposed standard, the channels are taken back by the franchise holder. Notably, commercial channels are not held to this standard. Under Georgia state law, a PEG channel can be taken back if it doesn't have 9 hours each calendar day of nonrepeat programs. Commercial channels can regularly repeat old movies, commercials, sitcoms and reality shows but PEG programs on HIV/AIDS prevention, housing assistance, or job opportunities can only play once or put a PEG channel at risk. The nonrepeat programming requirement has shown up in states where AT&T has backed the introduction of state laws, and can also be found in cable refranchising negotiations.

For 21 years, Tampa Educational Cable Consortium (TECC) has offered programs on The Education Channel and The Explorer Channel. Original programming such as *Mathematics Homework Hotline* reached 2,000 students each year with 25,000 annually downloading the web tutorials. *The Mini-Med School* program provides accurate and timely information to adults

about pressing medical concerns including the 12-part series, *Taking Control of Cancer*, which was seen by 28% of the audience, or 31,000 households. After passage of Florida state law in 2007, TECC lost $500,000 in funding, or 60% of its annual budget, and both educational channels were moved from Channels 18 and 21 to Channels 614 and 620, which required a digital box at an additional cost to the subscriber. While previous surveys had shown that 41% of the 285,000 subscribers in Hillsborough County watched the Education Channel, many people are now unable to access or find the channel. The public access channel, Tampa Bay Community Network, lost a third of its funding. The significant loss of PEG funding in Hillsborough County, Florida, will result in a significant loss of local programming.

The adverse impacts on PEG have been amplified where incumbent cable operators have interpreted the passage of state franchise law as ending their existing franchise PEG obligations. Comcast closed all of its PEG studios in southwestern Michigan after state video franchise law passed in 2006. In Indiana, within six months after state franchise law advanced by AT&T had been enacted, Comcast notified residents that all of its northern Indiana PEG studios were closing. Sheriff David Lain, of the Porter County Indiana Sheriff's Department in Rep. Visclosky's home district, was one of the residents whose use of a PEG channel ended unceremoniously after producing his show every week for eight years. Sheriff Lain's program highlighted officers and programs of the Sheriff's Department, such as ice rescue, crime stoppers, preventing child abuse, and animal control. The program reached beyond law enforcement to partner with the local community. Rep. Visclosky was a past guest on Sheriff Lain's PEG show, as were the Red Cross, Salvation Army, Valpo YMCA, United Way, and Boys and Girls Club.

Eight years of community programming about Valparaiso, Chesterton, Portage, LaPorte and Lake Counties ended. And nothing will replace it. Says Sheriff Lain; "We provided access to so many terrific organizations that didn't have the wherewithal to do a program like this … Our program helped with the public's buy-in regarding public safety issues. I've always thought that the organizations with whom we partnered – the nonprofits that are out there every day trying to improve the quality of life in Northern Indiana - lost the most when we lost our program. We were the only game in town and the only opportunity for them to promote their good works through our network."

Even in the early stages of adoption and implementation, the negative fallout from the new state video franchise laws has been substantial and will continue to mount. As incumbents and new entrants apply to operate under these new state franchises, more communities will experience the cutbacks and degradation of PEG services reported in this survey, leaving many communities in the nation without the diverse, local programming provided through PEG channels. This outcome directly contradicts one of the stated goals of the 1984 Cable Act: that franchises be responsive to the needs and interests of the local community.

FCC Actions

In December of 2006, the FCC's Report and Order in the *Video Franchising* proceeding (the "Order") replaced local franchising with FCC authority to determine what is best for the local community. A Second Report and Order followed on October 31, 2007, extending many of the provisions of the first ruling to incumbent cable operators.

PEG is harmed in multiple ways by the FCC's actions. The erosion of local franchising authority undermines the provision of PEG. The establishment of an unreasonably short shot clock with a deemed granted provision negates Congress' intention that community needs and interests are fully considered as part of the video franchising process. Relaxing build-out requirements will deprive customers from seeing PEG channels. The Order poses new risks to future growth in PEG capacity, and ambiguous language in the Order raises unanswered questions about the future of PEG funding.

Commissioners Copps and Adelstein strongly objected to both the First and Second *Video Franchising* Orders. Following the 3-2 votes on the Second Report and Order on *Video Franchising*, Commissioner Copps commented:

> My concern about today's decision is not just philosophical. As the record indicates, one possible consequence of this new set of regulations may be to deprive American consumers of access to PEG channels that serve important community needs. Another effect may be to deprive local governments of access to I-Net facilities that support public safety and other important government operations ...Why incur such results when Congress provided a workable process for incumbent video providers and LFAs to negotiate with each other for franchises, with recourse to federal district courts if disagreements arose?

Commissioner Adelstein pointed out that the Second Order will further exacerbate the negative fallout from the First Report and Order on *Video Franchising*:

> As I predicted, the First Report and Order, which purported to provide clarification with respect to which franchise fees are permissible under the Communications Act, has in fact muddled the regime and left communities, incumbent cable operators and new entrants with conflicting views about funding and support for public, education and government (PEG) facilities, including local institutional networks (I-Nets).

The FCC justified its intervention as being needed to remove barriers to entry and to open the door to more competition. The Order relied heavily on telephone industry comments that asserted that local franchise negotiations for public benefits such as PEG access obligations acted as a barrier to entry. But the record in front of the FCC did not support that contention.

The spring issue of *NATOA Journal* includes a report by Sefanie Meyers & Connie Ledoux Book, Ph.D., that examines the FCC's use of anecdotal evidence in the Order.[3] This article notes that of the 4424 comments filed, 3771 were from individuals. Many of those comments focused on the importance of protecting PEG funding and carriage. Meyers and Book report that, "None of the filed individuals' comments about public access are cited in the Report and Order." *Not one*. The article notes, "Of the remaining 653 comments filed, the majority were from local franchising authorities (430). Telephone companies filed 23 comments and cable companies filed 26 comments." But the FCC primarily relied on industry comments - 77% of the comments cited in the Report and Order were filed by telephone companies, and 23% of the comments the FCC cited were by cities.

Meyers and Book then drilled down deeper and found that despite the fact that telephone company comments were heavily relied on by the FCC in reaching its decision, the examples provided by industry of supposedly "unreasonable" local franchising demands causing a barrier to telco entry boiled down to 15 examples. Eight of those were broad generalizations with no specific facts; municipal commenters refuted the majority of the remaining seven. The FCC's *Video Franchising* Order thus relied on largely unsubstantiated claims by the industry to conclude that FCC intervention in the cable franchise process is needed. But the record doesn't

[3] NATOA Journal, Spring 2008 *An Examination of the Use of Anecdotal Evidence in the FCC's Report and Order on Video Franchising* by Stefanie Meyers & Connie Ledoux Book, Ph.D.

support that contention. The FCC's precipitous action represents a "solution" in search of a problem.

Whether intended or not, the FCC in the *Video Franchising* Order sent a signal to telephone companies that reducing public benefits like PEG access is an acceptable price to be paid for speeding telephone company entry into the cable market. The FCC ignored the fact that the incumbent cable industry, which has historically supported PEG access, has thrived under local franchising, with annual cable gross revenues (excluding Internet and telephony) growing at a healthy average rate of 5% per subscriber during the past 10 years, expanding into a robust 75.2 billion dollar industry today.[4] As Meyers and Book note, "not only does virtually every household have at least one cable provider option, but communities have also now gained a broadband provider, landline telephone competition, PEG programming, enhanced democratic process with live broadcasts of city council meetings, and all through a local [franchise] negotiation to meet community needs and interests."

Accessibility of PEG

Congressional intent is clear that PEG channels are to "...be available to all cable subscribers on the basic service tier and at the lowest reasonable rate."[5] As noted by Mayor John B. O'Reilly, Jr., of Dearborn, Michigan, in his testimony this past January before the US House Energy and Commerce Subcommittee on Telecommunications and the Internet, "Today, Comcast and AT&T, and other video service providers, cloaked in the guise of digital advancement, seek to rid themselves of these congressionally-mandated public interest obligations."

A recent disturbing trend has been seen with Comcast in Michigan, Brighthouse in Florida, Charter in Wisconsin and Nevada, and Cablevision in Connecticut, New York and New Jersey. Each of those companies has sought to remove PEG channels from accessible basic analog tier channel locations available to all customers, and to relocate them to high digital

[4] www.ncta.com, 8-29-08

[5] "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....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).

channel number locations accessible only to customers that pay for a digital box. My colleague from BronxNet will detail issues that have resulted from these actions, many taken far in advance of cable digital transition requirements. Those companies are attempting to free up analog capacity for other uses while depriving viewers of convenient access to local information that is only available on PEG channels.

AT&T has gone even further in making PEG more inaccessible to viewers. It has made the business decision to remove PEG channels from the traditional television channel "line-up" entirely, burying all local PEG channels behind a "Channel 99" designation that is an internet-like "application" with substandard functionality and inferior quality compared to commercial channels. This is a direct affront to the PEG accessibility goals of Congress and to state laws that clearly require that PEG channels be treated in a manner "similar" or "equivalent to" commercial channels.

The deficiencies of AT&T's "PEG product" are obvious when attempting to find and watch a PEG channel. Residents are forced to search through a series of menus for the PEG program of their choice while waiting for each page to "load," a process that is not required to retrieve commercial channels. PEG channels cannot be saved as a "favorite and viewers can't channel surf between PEG and other channels. All PEG channel identity is stripped away, so that an individual community's PEG channel will be invisible to anyone looking at the channel guide or programming listings. PEG signal quality and functionality are also inferior to broadcast channels.

To summarize, AT&T's "U-verse" PEG product:

- Is cumbersome to find and slower to load than commercial channels;
- Has inferior picture and audio quality compared to commercial channels;
- Cannot support closed captioning;
- Cannot support second audio programming;
- Prevents channel surfing between broadcast and PEG channels;
- Is incompatible with programmed recording devices like DVRs and TiVo; and
- Excludes individual PEG channel and program listings.

AT&T imposed its Channel 99 PEG product without consideration for community needs and interests, and without consultation with PEG centers, instead making the business decision that it was no longer necessary to present PEG channels in a manner equivalent to other channels. AT&T insists it has introduced an innovation by presenting all PEG channels in a region to all viewers in its region. PEG centers already can, and do use the Internet in the same way broadcasters do, to stream content or selectively place programs that require a broader reach. Not only does Channel 99 *not* replace having PEG treated equally to commercial channels, in many instances, it is not even a desirable outcome when information on those channels is directly targeted to the local community, not an entire region.

AT&T's PEG system represents a step backward for community television stations, including the fact that its PEG product does not support basic functions like closed captioning. In a recent demonstration of its PEG product in Illinois, an AT&T representative asked whether any PEG centers use closed captioning, and a number of hands went up. In a demonstration in a neighboring suburb later that week, the same representative stated that PEG centers do not use closed captioning. Presumably, the AT&T representative determined that it was better to mislead than to respond to the expressed need for closed captioning.

AT&T claims its lack of support for closed captioning is satisfied by its offer of open captioning. Disability rights activist Gloria Nichols of American Disabled for Attendant Programs Today (ADAPT), disagrees: "Open captioning is not a solution. AT&T is taking the choice out of viewer's hands and imposing its choice. Whether people want the captioning open or not, the viewer isn't given a choice." Another service available to commercial channels, but denied to PEG by AT&T, is second audio programming (SAP audio), used by PEG centers to convey programming in both English and Spanish.

In addition to the multiple deficits in AT&T's PEG product, local governments are grappling with AT&T's cumbersome and inefficient emergency alert system procedures. Currently, local governments can run a scroll on cable channels and broadcast channels directing viewers to a particular PEG channel for an emergency message like a chemical spill or boil order. That cannot be done for several reasons with AT&T's PEG product. Emergency messages generated by municipalities will not override broadcast channels on AT&T's U-Verse system and PEG channels are hard to find and retrieve. Viewers tuning to Channel 99 will see a list of dozens of community channels, slowing down the process of dissemination of emergency

information. AT&T's design is creating a public safety issue in communities around the country. Given the potential confusion and slow response time caused by AT&T's approach, this is a disservice during a time of increased concern about public safety issues.

When challenged about the deficiencies of its PEG product, AT&T employs a number of different tactics. One is to deny the facts and state that there is no problem and the company is in compliance with relevant laws. AT&T Illinois President Paul La Schiazza recently claimed in a letter to *The Chicago Tribune*, "All PEG content is easily found on U-verse's Channel 99, which is absolutely acceptable under state law...." This ignores the requirement in Illinois law that PEG channels must be provided at equivalent quality and functionality as commercial channels.

While AT&T Illinois President La Schiazza publicly dismisses criticisms of its PEG product, other AT&T representatives have repeatedly acknowledged deficiencies in that product, both in local and national demonstrations of AT&T's PEG product, referring to its treatment of PEG as "a work in progress," one representative even adding, "you can either fight it or embrace it."

The foundation of AT&T's defense of its PEG product is to claim that it is not technically feasible with its IPTV architecture to carry PEG channels in a manner equivalent to broadcast channels. A recent study prepared by Maryland-based, independent engineering firm, Columbia Telecommunications Corporation, for Illinois NATOA,[6] directly addresses whether, in fact, there are technical obstacles to AT&T treating PEG channels at equivalent signal quality and functionality with other video channels. The conclusion is not only that AT&T can treat PEG channels equally, but also that AT&T's IPTV system has even more flexibility to localize channel line-ups than traditional cable systems.

The report reached that conclusion based on the following:

- PEG channels can be encoded at the same quality as commercial channels;

[6] See Appendix B, *Delivery of PEG Programming at Commercial Quality*. This study was prepared by CTC, an independent engineering firm with 25 years experience working with existing and emerging technologies to provide services in technology planning, communications network assessment and implementation, and project management. Illinois National Association of Telecommunications Officers and Advisors is a regional association of government telecommunications officers and experts who work in communications.

- Technology to preserve the quality of PEG audio and video signals while in transit to the AT&T network is readily available;
- PEG channels need not be inserted into the program lineup in a manner different from commercial channels; and
- IP-based video technologies offer greater, not less, flexibility to localize channel line-ups.

Clearly, the technology exists *now* for AT&T to treat PEG in an equivalent manner. This is not a technical issue; it is a business decision.

What Needs to be Done?

I speak to this Subcommittee as appropriators. You fuel the engine that keeps our government running. And when it comes to PEG access, we are headed in the wrong direction.

In the Subcommittee markup of the 2009 Financial Services and General Government Appropriations Bill, this Subcommittee prohibited funds from being used to implement or enforce the FCC's changes to the newspaper-broadcast cross-ownership rules. Chairman Serrano noted his belief that the "loosening of media consolidation rules is detrimental to the goals of diversity in ownership and viewpoints, as well as to localism and independence in the news media."

The dismantling of protections for PEG access is a similarly direct affront to localism and diversity goals. We need leaders in Congress ready and willing to step back in front and steer this process back to a meaningful realization of those Congressional goals. PEG access will not survive absent fundamental and irrevocable requirements regarding PEG funding and channel carriage.

We urge the Appropriations Committee and this Subcommittee to:

(1) Prohibit funds from being used to implement or enforce the FCC's *Video Franchising* Orders.

(2) Compel the FCC to reconsider its *Video Franchising* Orders in light of its adverse impact on PEG; and

(3) Have the Government Accountability Office conduct a study about the impact of the FCC's *Video Franchising* Orders and new state video franchising laws on PEG centers across the nation.

We urge Congress to assure the future economic viability and accessibility of PEG channels with:

- A federal requirement that funding for PEG required from video service providers, over and above the 5% cable franchise fee, may be used for any PEG-related purpose, without the outdated and unnecessary restriction of PEG funding to only capital costs.
- A federally mandated requirement that video franchise holders provide PEG channels at equivalent signal quality and functionality to that provided to local broadcast channels, with the capability of supporting closed captioning, SAP audio, channel surfing, DVR recording and other functions available to broadcast channels.
- A federally mandated requirement that PEG channels be located on the lowest cost, most accessible tier of service adjacent to broadcast channels, without the need of additional equipment to view all programming on that tier.
- A definition of the basic service tier that is not limited to rate regulated communities, but is an obligation of every video provider utilizing public property for the delivery of its services.
- A federal requirement that any violations of these PEG requirements be subject to substantial monetary penalties under the Communications Act.
- A federal requirement that PEG capacity and funding be determined at the local, not the federal or state, level based on local community needs and interests.

Thank you for the opportunity to testify. I look forward to your questions.

APPENDIX A

Assessing the Damage:

Survey shows that state video franchise laws bring no rate relief while harming public benefits

About the Survey

In May 2008, the Alliance for Community Media (ACM) initiated an online survey regarding the impact of state video franchise laws. Members of ACM and the National Association of Telecommunications Officers and Advisors (NATOA) from around the country participated in this survey.

There were 204 respondents from 33 states, representing public, educational and governmental (PEG) access television centers. Of those respondents, 140 from 18 states now have a state video franchise law in effect. *This summary focuses on the responses from those with state video franchise laws.*

Companies applying to operate under new state laws

- 68% of survey respondents report that new entrants (AT&T and Verizon) have applied for state franchises.
- 52% report that their incumbent cable providers have applied for state franchises.

Impact on PEG Facilities and Services

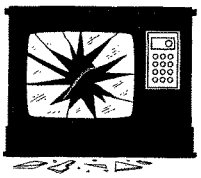
Since the recent passage of state video franchise laws, many PEG centers already see a negative impact on their funding and operations, and a decrease in related services or benefits.

- *About 20% of respondents report PEG funding decreases since the advent of statewide franchising (including communities in CA, FL, IA, IN, KS, MI, MO, NC, OH, TX and WI), while cable operators report record earnings. In many communities, PEG funding that had been available for all PEG-related costs is now restricted to capital purchases.*

- *Respondents from 17 communities in 8 different states report that loss of access to PEG facilities managed by cable operators occurred soon after state video franchise laws removed local obligations from those companies. In addition, Comcast used state franchise law as the excuse to close all of its PEG facilities in northern Indiana and southwestern Michigan in September of 2007, prior to distribution of this survey.*

- *26% of respondents that had public cable drops in locations like libraries, schools and other public centers, and 41% of respondents in communities that had an Institutional Network connecting government facilities, educational institutions, and PEG facilities report the loss or reduction of those benefits (including communities in CA, CT, FL, GA, IN, MI, MO, NC, OH, TX and WI).*

Impact on Quality and Functionality of PEG Channels



About two-thirds of affected survey respondents from 13 states report that new state franchise service providers deliver PEG channels with impaired signal quality and functionality. For example, AT&T's "U-verse" system:

- *takes up to a minute or more to tune in a PEG channel*
- *presents PEG at inferior quality compared to commercial channels*
- *cannot support closed captioning or second audio programming*
- *does not support DVR recording (like "TiVo") of PEG channels*
- *strips away PEG channel number identity*
- *prevents viewers from channel surfing to and from PEG channels*

Impact on PEG Channels Carriage
Since the passage of state video franchise laws, PEG centers report reductions and threats to their existing channels. Operating under recently-adopted state rules, many new entrants and incumbents quickly took steps to limit PEG channel capacity and placement.

- *Nearly 25% of respondents said they lost or expect to lose channels since the advent of statewide franchising (including communities in CA, FL, GA, IN, KS, MI, MO, NC, OH, TX and WI).*

- *Respondents from 29 communities in 12 states report PEG channels being moved by incumbent cable operators to "digital only" channels, decreasing accessibility & visibility and increasing costs for subscribers.*

- *Respondents from 8 states report that they must purchase special hardware and pay significant fees to deliver PEG channels to new state franchise service providers. Such carriage fees were never required previously under local franchises, and are not paid by local commercial and public broadcast stations.*

Impact on Cable Rates
Survey respondents confirm what has been widely reported elsewhere: relief to the consumer from skyrocketing cable rates -- the major reason for adopting state video franchise laws -- has not occurred.

- *Two-thirds of respondents said basic cable rates have increased in their communities after a state video franchise law was adopted and a new competitor arrived.*

- *Only 1% said that rates have gone down.*

Preliminary Conclusions
Even in the early stages of adoption and implementation, the negative fallout from the state video franchise laws has been substantial and will continue to mount. As incumbents and new entrants apply to operate under these new franchises, more communities will experience the cutbacks and degradation of PEG services reported in this survey, leaving many communities in the nation without the diverse, local programming provided through PEG channels. This outcome directly contradicts the purpose stated in the Cable Act of 1984, that franchises be responsive to the needs and interests of the local community.

It's important to note that in states where PEG Access has greater protection in the state video franchise laws, AT&T is ignoring requirements to provide PEG at "similar" (CA law) or "equivalent" (IL law) signal quality and functionality as commercial channels. This disadvantages, rather then serves local communities.

It is our hope that the information drawn from this initial survey of communities affected by state video franchise laws will inform proactive legislative and regulatory action to preserve the localism and diversity of programming that emerges from PEG channels nationwide.

The Alliance for Community Media is a national membership organization representing more than 3,000 PEG access centers across the nation. Local PEG programmers produce 20,000 hours of new programs per week, and serve more than 250,000 organizations annually through the efforts of an estimated 1.2 million volunteers.

For survey information, contact ACM Public Policy Committee member, Barbara Popovic
(312) 738-1400, bpopovic@cantv.org

APPENDIX B

Illinois Chapter of the

National Association of Telecommunications

Officers and Advisors (ILNATOA)

Delivery of PEG Programming at Commercial Quality

September 2, 2008

Columbia Telecommunications Corporation • 10613 Concord Street • Kensington, MD 20895
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1 Overview and Methodology

The purpose of this report is to determine whether public, educational and government (PEG) programming over the AT&T video system can be delivered with comparable quality and functionality to those of commercial channels.

Whether the programming source for a video channel is a PEG studio, an off-air broadcast, or a commercial network satellite downlink, a systemic disparity in delivery quality between PEG and commercial channels results from dissimilar technologies or configurations employed for these two categories of services – there is no fundamental technical difference between a video signal with commercial advertisements and one without.

Furthermore, one of the key advantages to a fully Internet Protocol (IP) based video delivery network is the ability to provide a virtually limitless quantity of video channels with control over access and viewer experience at a level of granularity down to the individual subscriber, or any broader subset. This can include anything from unique channel line-ups to customized on-screen advertisements.

The primary strategy we recommend for achieving comparable quality and functionality for PEG program delivery is to replace or reconfigure systems and components currently used for PEG delivery with components and configurations equivalent to those used for commercial channels. This recommendation is necessary to address technical limitations in the design of the current AT&T PEG solution to the extent that they contribute to the degraded quality, functionality, and presentation of these channels.

Much of the detailed information about the specific design and operation of the AT&T system has not been made publicly available. Where there is not sufficient detailed technical information available to specify particular configurations or components, this document refers to the capabilities of systems successfully providing similar Internet Protocol (IP) based video delivery functionality.

This document separates the discussion of delivery and presentation of the PEG channels into four separate functional components:

- Encoding (conversion) of PEG video to an IP digital format
- Transmission of signal from the PEG center to AT&T's system
- Insertion of PEG signals into AT&T programming lineup
- Transmission of PEG programming to AT&T customers

Note that the discussion of "video quality" in this document relates only to the upper limit possible from the current systems used to carry PEG signals on the AT&T network, which is not affected by the quality of recorded content or studio systems comprising the PEG source material. Whether for a commercial or PEG channel, we recognize that the diagnosis and resolution of isolated video quality problems is complex and not always caused by the subscriber delivery network.

2 Encoding of PEG Video

PEG channels can be encoded at the same quality as commercial channels.

One of the most significant factors determining the quality of the PEG signal is the technical format used for encoding and compressing the PEG origination signals. The encoding format must be selected so that the picture resolution, color, motion reproduction, and other observable features of the programming are not noticeably changed by the process. Depending on the format of the programming material at the PEG source, which ranges from analog video to uncompressed digital streams, this encoding step may involve an initial conversion of the signal to a digital format (digitization) or changing the signal to a different digital format (transcoding). Regardless, according to AT&T specifications, the net result is a digitally compressed signal leveraging the Windows Media Video 9 (WMV 9) format, currently using a total encoding data rate (video and audio) of 1.25 Mbps[1].

It is not known exactly what encoding or transcoding equipment is used for commercial channels carried on the AT&T system. The typical studio environment for standard definition broadcast television uses the serial digital interface (SDI) standard with D1 screen resolution or (720 x 480), though many digital encoding processes in a typical studio environment use resolutions of 640 x 480, as it effectively reproduces the 4:3 aspect ratio of standard definition video. Using lower resolution encoding will result in a degraded picture. This is evident when an NTSC program is recorded to a VHS video tape.

Therefore, the recommended approach is to encode PEG origination signals at a resolution of 640 x 480 (or 720 x 480), equivalent to that of a typical professional standard definition studio environment. A wide range of products exist that support WMV 9 encoding at a range of bit rates, frame rates, and resolutions. For example, the Inlet Technologies Spinnaker 3005 (recommended by AT&T[2]), and the VBrick WM Appliance will both support WMV 9 Main Profile encoding at bit rates at or above 4 Mbps.

Most encoders have selectable resolution, buffering, output bandwidth and other parameters. Again, the ideal approach would be to select settings and equipment that have been demonstrated to provide the quality of the commercial programs.

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[1] AT&T provides supported encoding specifications in their "PEG Equipment & Transport Information" version 7 document

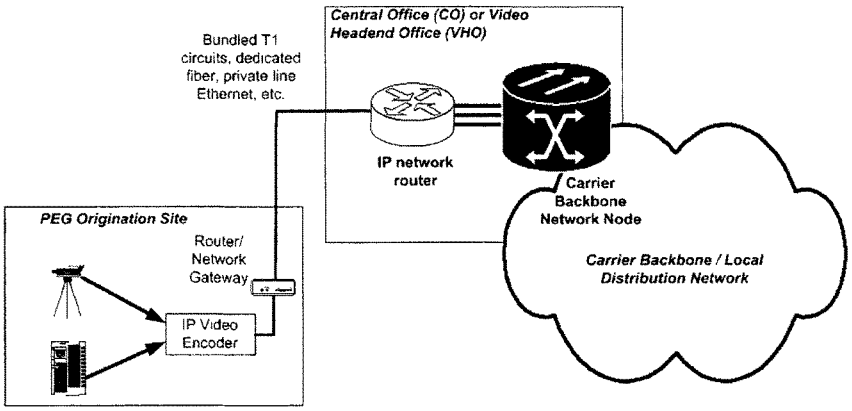
[2] The Inlet Spinnaker 3005 is an encoding appliance specifically identified by AT&T in their "PEG Equipment & Transport Information" version 7 document.

3 Transport of PEG Video

Technology to preserve the quality of PEG audio and video signals while in transit to the AT&T network is readily available.

Once the video is encoded into a digital format suitable for IP-based transmission, it is transported to AT&T's system, either over dedicated data circuits or the Internet (Figure 1). It is important that the capacity and quality of the entire link between the PEG origination location and the point of "insertion" into the AT&T video distribution systems preserves the quality of the video signal. No matter what technology is used, the link used to transport the video must be of sufficient bandwidth to accommodate the video created by the encoder—the capacity requirement is dictated by the encoding.

Figure 1: PEG Origination Uplink



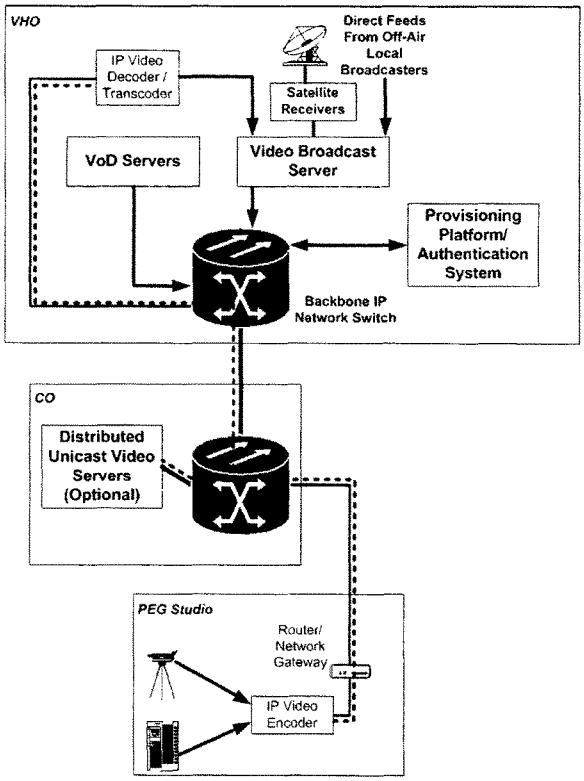
In other words, if the encoder generates a video stream of 3 megabits per second (Mbps) when it is configured for the necessary resolution and quality, then the link must have more than 3 Mbps available at all times for each video link. There are many strategies to guarantee that the transmission link preserves picture quality. One is to establish a dedicated circuit of sufficient capacity from the origination point to the video headend. This is a technique commonly used by cable operators and also by Verizon in its video systems. Other techniques include using "quality of service" (QoS) mechanisms that prioritize certain types of traffic, including video, relative to other traffic to ensure that sufficient capacity remains available even when multipurpose backbone links are heavily saturated.

4 Insertion of PEG Video into the AT&T Programming Lineup

PEG channels need not be inserted into the program lineup in a manner different from commercial channels.

Insertion of video programming into an IP-based delivery system is fundamentally different than a traditional cable system. A traditional cable signal physically "inserts" signals by modulating onto various carrier frequencies and combining these modulated signals. An IP delivery system only re-transmits the encoded origination signal, either in its native format or a transcoded version in which the type of encoding, bit rate, or other parameter is modified prior to re-transmitting to subscribers. Typically video broadcast servers are used to generate individual streams for each user, or the server can transmit a single multicast stream (discussed further in Section 5).

Figure 2: PEG Channel "Insertion"



In order to preserve picture quality, the PEG programming must be available to the AT&T broadcast servers in the same manner that the commercial programs are available.

Generally, in IP video systems, these broadcast video servers receive streams from their sources (studios, satellite downlinks, antenna feeds) and "host" the available channels in the same manner that Internet Web sites host the content on their sites. Parameters on the server should be set so that the PEG programming is treated in the same manner as commercial programming.

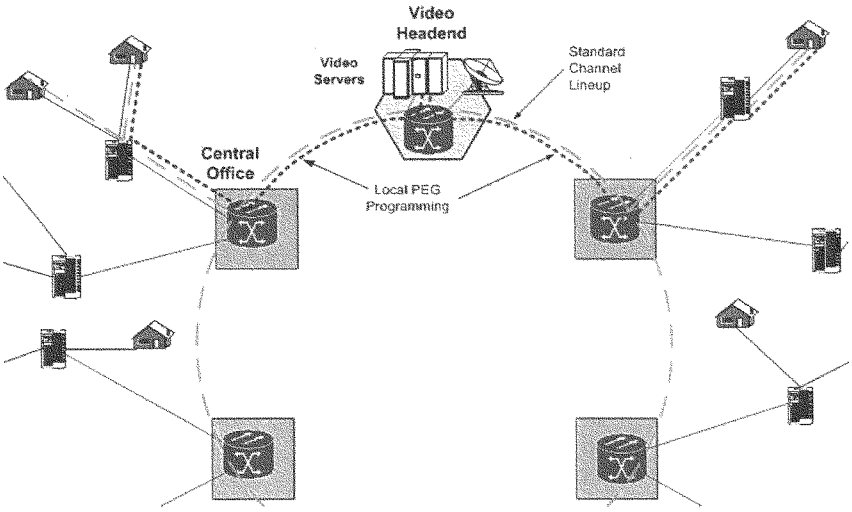
5 Transmission of AT&T Programming to Viewers

IP-based video technologies offer greater flexibility to localize channel lineups, not less.

Video delivery systems built entirely on IP-based transmission, including AT&T's U-verse, are organized differently from traditional cable systems. In a traditional cable system, the programming channels are "combined" into a channel lineup and sent in a cable to the subscribers. Any change to the channel line-up downstream of this insertion involves a physical process of filtering and inserting a new signal in a particular (physical) channel. The channel number indicates the placement of the programming in frequency (in analog systems) or the location in the cable channel lineup where the set-top converter knows to find the signal.

In an IP system, the programming is streamed from network servers at the video headend, or at some intermediate location, and the viewer selects the programming from their set-top converter. The server at the headend then streams the requested program to the set-top box. Each viewer receives exactly one discrete video signal corresponding to the channel requested. This model is more analogous to a "unicast" delivery in response to a request for a web page from a web browser. This differs from traditional cable services, in which all channels are physically broadcast and delivered to every viewer simultaneously – the television or set-top box only displays the "tuned" channel in this case. There is no concept of physical "channels" in an IP video delivery system.

Figure 3: IP Video Delivery to Subscribers



The benefit of IP-based video delivery is further realized relative to the ability to localize channel line-ups. Through the use of IP multicast technology, the network devices (switches and routers) downstream of the servers can make "copies" of the video streams on an as-needed basis, while filtering or "pruning" streams not "requested" by set-top boxes within portions of the network to reduce overall network capacity required. This creates highly deterministic capacity demand over local and backbone segments of the network, not impacted by the total number of "channels" available to subscribers. Even without the use of multicasting, distributed IP video broadcast servers can provide the same effective result from a network access and capacity perspective, bringing the ability to serve "unicast" copies of individual streams to viewers closer to the edges of the network (at least down to the Central Office level). Moreover, since only the channels requested by the set-top box will be streamed, the ability to support nearly unlimited quantity of channels either in a centralized or distributed architecture exists.

Which channels can be requested by a set-top box is determined strictly by access policies associated with the unique authentication and provisioning of each unit. Provisioning of set-top boxes involves the conditional enforcement of access policies by authentication systems that perform lookups on one or more databases of subscriber information. These databases map technical set-top box identification to subscriber information, such as the subscribed service package and billing status. Based on this provisioning, it would be possible to filter, or conditionally populate the "channels" listed in the interactive program guide to only include those channels to which a customer subscribes.

In other words, since the network relies on the ability to uniquely address and control each set-top box, it is possible to generate a custom channel line-up and numbering scheme for any subset of subscribers. Just as "premium" on-demand content is billed on an individual subscriber basis, the access to PEG channels can be individually controlled and authorized. In the case of PEG, this may mean that a different group of channels are listed in the program guide, of which each point to different video server stream addresses (channels), depending upon some particular field within the authentication/provisioning database relating to location. For example, it would be feasible to create a custom channel lineup associated with the billing zip code for a particular set-top box. Note that this would not be true in a traditional cable system, even with interactive addressable set-top boxes, since the flexibility to create custom line-ups is ultimately limited by the number of channels supported within the capacity of the subscriber connection.

Therefore, flexibility in channel lineup control and quantity of channels is increased because of AT&T's IP-based architecture, rather than it being a limiting factor. Despite having more centralized core systems supporting larger geographic areas than with a traditional cable system, an IP-based delivery system does not require delivering all channels to all locations. As mentioned, regardless of the number of channels, only those "requested" by the set-top box are transmitted to the viewer. Channels are essentially addresses within an IP-based server architecture (i.e. a web address, or URL); a channel in an IP-based delivery system does not represent a specific frequency space or constant amount of capacity between the provider and the subscriber, as in a traditional cable system.

6 Summary

It is technologically possible to deliver public, educational, and government (PEG) programming over the AT&T video system with comparable quality and functionality to the commercial channels. Moreover, in the State of Illinois, it is a statutory requirement for any operator of cable television or video programming services[3].

This report has reached that conclusion based on the following findings:

- PEG channels can be encoded at the same quality as commercial channels;
- Technology to preserve the quality of PEG audio and video signals while in transit to the AT&T network is readily available;
- PEG channels need not be inserted into the program lineup in a manner different from commercial channels; and
- IP-based video technologies offer greater, not less, flexibility to localize channel line ups.

[3]State of Illinois Cable and Video Competition Law of 2007, 220 ILCS 5/21-601(c)

Mr. SERRANO. Thank you.

Mr. Symons.

Mr. SYMONS. Thank you, Mr. Chairman and members of the committee. And thank you for the invitation to appear.

Mr. Chairman, my father grew up at 176th Street and Tremont Avenue, so it is a special pleasure to be here before you today.

Mr. SERRANO. It is nice of you to score those points.

Mr. SYMONS. Thank you for recognizing that, too, Mr. Chairman.

I would just like to make a couple of points in my oral presentation. First, cable has long supported public access programming. Over three decades of support include millions of dollars annually for studios and other training; channels, sometimes as many as 20, on cable systems or public access programming; and service to schools and libraries. Cable is very proud of its commitment to public access programming. We think it helps distinguish us in the marketplace as well as serve the community.

The good news for PEG programmers and for subscribers today is that cable intends to continue its commitment to public access programming and continue to fund public access. In the digital environment, there is no less of a need for public access programming than there has been historically in an analog world.

Cable also remains the leading PEG supporter among multichannel video programming distributors. You have heard from Ms. Popovic, and you yourselves have mentioned AT&T, but other multichannel providers that we compete with don't have the same level of commitment to public access programming. Satellite services like DirecTV don't have any local access programming. And in every case, even Verizon's public access programming requires everyone to have a set top box to receive it.

It is undeniable that the world is going digital, and we want to help public access providers that make that transition as well. Cable alone is the only provider of analog service right now, but that is going to change, and it is changing. Not only are broadcasters going digital, but cable is going digital, and cable programming is going digital.

Rather than leaving public access programming groups with increasingly fewer number of analog channels, we want to work with PEG programmers to bring them into the digital age, and make sure that our digital customers, which represent a majority of our cable customers today, 60 percent are digital, make sure that they have access to public access and educational and governmental programming as well.

I can assure you that all PEG channels will remain on the basic service tier where required by the franchising authority as required by the Cable Act. Where boxes are necessary, our companies have engaged in a variety of programs to make sure those boxes are readily available to consumers.

The end result is going to be more channels, better quality, features and interactivity that aren't available today in an analog world. We think that is a plus for all consumers, and we think the greater competitiveness of cable that results from the digital transition of cable programming will benefit even analog customers who will find that the cable system works better and delivers more services.

We believe that PEG can remain a valuable part of cable programming, and we commit to working with local governments and to the public access community to make sure that happens.

Thank you again for inviting me to speak with you today, and of course look forward to any questions.

[The information follows:]

TESTIMONY OF HOWARD J. SYMONS
on behalf of the
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

on

PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS TO CABLE TELEVISION

before the

Subcommittee on Financial Services and General Government of the Committee on Appropriations

UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

September 17, 2008

TESTIMONY OF HOWARD J. SYMONS

Good morning. My name is Howard Symons, and I'm here today on behalf of the National Cable and Telecommunications Association. I am a partner at the law firm of Mintz Levin, and have represented the cable industry on regulatory matters before Congress and the FCC for almost 20 years. Prior to being in private practice, I was Senior Counsel to the U.S. House Telecommunications Subcommittee, where I assisted in the drafting of the 1984 Federal Cable Act, including the provisions governing public, educational and government -- better known as "PEG" -- programming. Thank you for the opportunity to talk about cable's commitment to PEG.

The cable industry has long been a supporter of PEG programming. For over 30 years, cable operators have spent millions of dollars each year to construct the local studios and other facilities necessary to produce this programming and to provide training and other support for PEG. Under the terms of franchise agreements negotiated with communities all over America, they have allocated multiple channels on their cable systems in the country to use for PEG programming -- sometimes up to 20 channels or more. Cable has also provided over 71,000 schools and libraries across the nation free access to PEG channels. Cable's PEG commitments often include free transmission of PEG channels from

studios to the cable network "headend," playback of programming on specified dates and times at local government's request, and technical consultation services.

This commitment of channel capacity, funding and assistance ensures that all members of the community can stay in touch with town meetings and other activities of their local government and take advantage of tutoring or other community education programs. PEG channels are also an outlet for ordinary citizens to communicate their ideas to the community, whether those ideas are in the mainstream or even a little quirky. PEG makes each cable system a conduit for truly local programming as well as the national and international fare that we provide our subscribers. The cable industry has been proud of its unique commitment to PEG, and has always believed that its PEG offerings set it apart from any of its competitors.

The good news for PEG programmers today is that cable intends to continue its commitment to make channel capacity and funding available for PEG programming. And as cable completes its change from an analog medium to a digital one, cable operators want to work with the PEG community to ensure that cable subscribers continue to receive this programming.

It is undeniable that the media world is going digital. Following Congress's lead in requiring broadcasters to go digital, cable operators have been converting their systems and cable programmers have been converting their services -- all in

preparation for the near day that cable is delivered and received entirely in digital. In fact, cable is one of the last sources of analog programming *at all* today. Every one of the competitors cable operators face -- DirecTV, Dish, AT&T, Verizon -- has an all-digital system.

Cable, too, is moving towards an all-digital world. Cable operators are beginning to move their systems to all-digital transmission. Cable programmers no longer even develop new analog services; the latest innovative creations -- for example, Discovery's Planet Green and PBS Kids Sprout -- are available solely in digital format. And cable's customers have followed: more than 60% of cable customers today are digital cable customers, and that number continues to grow.

The move to digital brings with it considerable benefits for consumers. Only digital cable systems can deliver the crystal-clear HD programming that consumers crave. Digital channels also take up far less capacity than analog channels, so in the place of every analog channel, multiple new digital services can be offered, allowing cable operators to better meet the needs of its varied subscribers and offer a greater diversity of programming than ever before. Other capacity once used for analog channels can be used for innovative offerings today's subscribers demand, like expanded video-on-demand offerings, telephone service and even faster broadband access.

As the industry transitions to all-digital, cable operators are keeping pace by beginning to make measured changes to their channel line-ups. Programming services that were once carried in both analog and digital format are increasingly being carried only in digital, and the capacity recovered from deleting that duplicative channel used to add additional programming to the service. Affected programmers include popular services such as E! and Sci-Fi Channel. In some markets, PEG channels are among these programming services. Prior to making these changes, cable operators confer with franchising authorities. Operators also reach out to customers so that they remain aware of how and where to find PEG programming.

Let me emphasize that even where PEG channels are being moved to a digital delivery format, all PEG channels will remain on the basic service tier where required by the franchising authority, as mandated by the Federal Cable Act. But rather than leaving PEG channels grouped with the small number of increasingly less watched analog channels, these channels are part of the digital service viewers increasingly turn to. Most operators also plan to group PEG channels together, so they will remain easy for viewers to find. And just as with commercial programming, the shift from analog to digital PEG will mean enhanced picture quality and all the other benefits of digital transmission.

There will inevitably be some transitional issues associated with these changes. But the end result will be more channels, better quality picture, and features and interactivity that can't be achieved in the analog world. And even analog video subscribers will benefit from the new or improved non-video services such as voice, broadband, and gaming that cable operators will be able to offer on channel capacity that is freed up as digital channels replace analog. Consumer demand for these services is very strong and, by increasing their availability, cable operators are responding to the needs of all of their customers -- including their analog-only cable subscribers, who may find these offerings of great value.

Recognizing the challenges of the digital transition, cable operators are committed to working with local governments to ensure that PEG channels are available to our cable subscribers while at the same time ensuring that we meet the needs of our customers and the business. To that end, many cable operators are making a converter box available for free on request that will make digital PEG channels viewable on an analog television. Finally, in the digital era as in the analog, cable will remain the leading provider and financial supporter of PEG programming. DirecTV and Dish do not provide the same extent of PEG programming to their subscribers and do not contribute to local PEG efforts at all; instead, they point to national programming as meeting community needs, even

though that programming bears no resemblance to the truly local, community-specific PEG programming offered on cable and is much more akin to the programming seen on popular commercial networks. Indeed, some cable operators voluntarily carry several of the same networks, such as the Pentagon Channel or Three Angels Broadcasting Network, that satellite operators point to as fulfilling their public interest obligations. Likewise, AT&T provides virtually no PEG programming at all, and in the few instances in which it does, offers those channels only on an on-demand basis; and Verizon always has required its customers to acquire a set-top box to receive PEG channels. As a result, as customers switch to these other video providers, PEG programmers are losing viewership and funding and consumers have diminished access to local programming. Indeed, in the few instances in which cable operators have cut back on PEG programming or funding lately, it is to respond to the competitive pressures created by this regulatory disparity.

Working with state and local governments and the PEG community, we believe PEG can remain a valuable part of cable programming in the digital age and as an industry we are committed to doing so. Thank you again for inviting me to speak with you today. I look forward to your questions.

Mr. SERRANO. Thank you.

Mr. Knobbe.

Mr. KNOBBE. Good day. I am Michael Max Knobbe, executive director of BronxNet.

Thank you, Chairman Serrano, and members of the subcommittee, for focusing on important issues that impact communities in terms of democracy, education, diversity, locally generated content, and access to technology.

Chairman Serrano, you consistently and effectively demonstrate tremendous leadership and courage in representing the people of the Bronx with what will be 40 years of public service.

The robust PEG environments in New York City and other parts of the New York State can be fostered by State regulations on franchising which encourage and allow for local authority and in fact require PEG programming. At BronxNet, a voice is given to those who have no access to traditional media by providing training and media production and access to technology. This is democracy in a digital age.

Brooklyn Community Access TV, QPTV, Manhattan Neighborhood Network, Staten Island TV, and BronxNet provide locally produced content on the public's channels that reflect the diversity of New York City. Together, New York City's public access centers have provided media production training to more than 20,000 people and have cable casts of over 80,000 hours of original local programming a year. In a city where 170 languages are spoken, residents can find content in Spanish and English, and everything from Urdu to Garifuna, to Albanian, to American Sign Language on PEG.

BronxNet produces award winning programming by, for, and about the Bronx. Locally produced programs concerning health, education, public affairs, arts and culture inform the public and help connect the Bronx to the world.

For example, BronxNet teamed up with Centro de Estudios Puertorriquenos of Hunter College and the Bronx Historical Society to produce Migration, the Puerto Rican Experience, the first in a series about the Puerto Rican people in New York City.

The BronxNet Training Program for Future Media Professionals has provided internships to over 1,000 high school and college students. Our partnerships, training for the public and students, and locally generated content contribute to community development through media.

BronxNet and all the PEG centers that serve New York City exemplify the vision that Congress has for PEG access. We are fortunate that, so far, reasonable franchises have been negotiated with telecommunications companies entering the New York City market. However, all of this is in jeopardy because of FCC orders on video franchising through legislation passed in 19 States preempting local control and other problems.

Media consolidation diminishes the local voice and leads to homogenous, centralized programming. You won't see City University of New York basketball and other athletics on ESPN; you will see them on PEG channels.

Cable operators are required by Federal law to carry PEG programming on the basic tier of services. Unfortunately, in many

States, operators will exile PEG channels to a digital Siberia, not anywhere near the basic tier. This practice is known as channel slamming. Charter Communications, Comcast, Bright House, and Time Warner are moving PEG channels into the upper 300s to 900-channel block in parts of the country.

When Comcast attempted to channel slam in Michigan, a Federal court found that the Comcast's argument was flawed and issued a temporary restraining order while the matter is being further litigated.

In addition to channel slamming, signal degradation and interior deployment for PEG channels, some cable providers require the purchase or rental of additional equipment to view PEG channels. In New York, New Jersey, Michigan, Connecticut, and other States, analog cable customers will have to pay an extra monthly fee ranging from $4.50 to $6.50 to receive PEG channels. This discriminatory practice pushes what is intended to be open, accessible, and inexpensive programming outside the reach of many consumers.

We cannot provide PEG services if our hands are tied by State legislatures, the FCC, and cable operators. We support the Alliance for Community Media's three requests to this subcommittee.

We also urge Congress to take concrete actions to, one, correct the FCC's limitations and misreading of the franchise fee provisions of the Cable Act; two, provide protections against channel slamming and discriminatory treatment of PEG channels; and, three, direct the FCC to conduct a study on technological needs for 21st century PEG services. Emerging and new technologies, digital functionality, interactivity, Video On Demand, high definition, and other upcoming technological advances are ideally suited and integral for 21st century PEG access services for our Nation.

We thank you for your commitment and important work on behalf of the people of the United States.

Stay strong.

[The information follows:]

BEFORE

UNITED STATES HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

Hearing on Public, Educational, and Governmental (PEG) Access for Cable Television

Testimony of

MICHAEL MAX KNOBBE

Executive Director

THE BRONX COMMUNITY CABLE PROGRAMMING CORPORATION

(BRONXNET),

BRONX, NEW YORK

SEPTEMBER 17, 2008, 10:00 A.M.

ROOM 2220, RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

Good Day. I'm Michael Max Knobbe, Executive Director of The Bronx Community Cable Corporation ("BronxNet"), and a member of the Alliance for Community Media ("ACM"). Thank you Chairman Serrano and distinguished members of the Subcommittee on Financial Services and General Government of the House Appropriations Committee for focusing on important issues that impact communities across this nation in terms of democracy, education, diversity, locally generated content, and access to technology. Chairman Serrano, you consistently and effectively demonstrate tremendous leadership and courage in representing the people of the Bronx and the nation. Your commitment through what will, in the coming year, be 40 years of public service, along with your diligence and keen insights benefit the people in every part of this great country and help connect the people of the United States with people from all over the world.

Public, Educational, and Governmental Access ("PEG") is an important commitment to the people of the United States. PEG channels support community development and provide an important means of civic participation. Cable providers have responsibility for providing this public benefit, in exchange for using the public rights of way. The cable and fiber running over and under land belonging to the people are integral to a cable provider's business. Congress adopted the Cable Acts of 1984 and 1992 and set forth principles and guidelines for communities to benefit from providers using the public rights of way.

At BronxNet, and in public access facilities across this great nation, a voice is given to those who have no access to traditional media. Through public access facilities we train the public in media production by providing television studio and field production workshops and enabling access to technology. At BronxNet and throughout New York City ("NYC"), people completing the training can utilize media production equipment at no cost to produce content to share with their neighbors through the communities' media channels. This is part of democracy in a digital age. Public access media production training and studio and field production usage by the public have

increased tremendously across NYC and in other parts of the nation. NYC PEG access centers have flourished to become an integral part and vital asset to the communities in which we operate.

Brooklyn Community Access Television ("BCAT"), BronxNet [in our Borough of Universities and Parks], Manhattan Neighborhood Network ("MNN"), Queens Public Television ("QPTV"), and Staten Island Community Television ("SICT") provide public access and locally produced content on the public's channels that reflect the diversity of NYC. Together NYC's public access centers have provided media production training to more than 20,000 people. The public access channels of NYC cablecast programs 24 hours a day, 7 days a week, airing over 80,000 hours of non-repeat local programming a year. There are four discrete public access channels for each borough, with new channels coming online next year including one with content developed by and for youth. Additionally CUNY TV, the educational channel, provides valuable and important programming through the City University of New York, and NYC TV, the governmental channel, provides government programs and shows about the whole city. The robust PEG environment in NYC and other parts of New York State is fostered by state regulations on franchising which encourage and allow for local authority and in fact require PEG programming.

New York City's vibrant diversity is reflected on BronxNet and all of the city's public access channels. Public access producers on BronxNet produce programs featuring news and information about Bronx residents who come from Puerto Rico, Mexico, Honduras, Jamaica, the Dominican Republic, Guyana, Ghana, Albania, Italy, Ireland, Thailand and many more countries. In addition to Spanish and English, BronxNet producers share programs in many languages, including Garifuna, a Central American language rooted in African culture, Thai, Albanian, Hindi, and more. On QPTV you will find programming in Russian, Greek, Romanian, French, and Urdu. Many languages including Arabic, Hebrew, Turkish, Portuguese, Japanese, and Korean can be heard and American Sign Language can be seen on MNN. Italian, Armenian, German, and several Chinese dialects are spoken on BCAT, which has a broad spectrum

of cultures featured, and a strong amount of West Indian Patois and Creole programs. In a city where 170 languages are spoken, residents can find important information in their native languages, and on their community channels.

BronxNet produces award-winning programming by, for, and about the Bronx. Locally produced programs concerning health, education, public affairs, arts, and culture inform the public and help connect the Bronx to the world. We bring great people and organizations into our studios and send our cameras out into the neighborhoods for BronxNet's regularly produced magazine programs and interactive call-in shows. Local elected leaders often appear on a broad array of programs to discuss topics important to the community, and many officials update viewers with programs they host.

BronxNet has worked with hundreds of non-profit organizations to produce videos and programs that help the organizations build support and audiences, while contributing to community development. Examples of the projects produced and facilitated by BronxNet include: Bronx Chamber of Commerce forums that contribute to the economic vitality of the Bronx; multi-cultural artistic presentations at Hostos Center for Arts & Culture and Pregones Theater that provide a way for local artists to showcase their work and build audiences; NY Blood Center blood drive announcements that help save lives; health questions that are answered on "HealthBeat" produced with Bronx-Lebanon Hospital; programming that informs on and is by and about the differently-abled special needs communities, along with internships through partnerships with the JFK Institute for Worker Education & the CUNY Youth Transition Project; a documentary on the Hunts Point Economic Development Corporation that showcases the world's largest food distribution center while dispelling myths about Hunts Point and the South Bronx; programs that showcase the borough's cultural institutions – both small and large – from the intimate En Foco Gallery to the world renowned New York Botanical Garden. In sharing the stories of the people of the Bronx, BronxNet teamed up with Centro de Estudios Puertorriqueños of Hunter College, and the Bronx Historical Society to produce "Migration: The Puerto Rican Experience" the first in a series of documentaries about the history, culture, and spirit of the Puerto Rican people in NYC.

Since its inception, BronxNet has collaborated closely with high schools and colleges – most notably – Lehman College where BronxNet is based. Students from the High School for Community Research & Learning produced a program about a scientific study of the Bronx River. John F. Kennedy High School students produce the program the Knight Network on BronxNet. The BronxNet Training Program for Future Media Professionals has provided hands-on training, through internships, to over a thousand high school and college students in shooting, postproduction, writing, and producing. Approximately five-hundred Lehman College students have completed BronxNet internships. And, over five-hundred more from other colleges and high schools have also received hands-on experience through the unique program, which has helped many students build valuable skills and fast-track their careers, including those pursuing opportunities in media. BronxNet interns have acquired key positions behind and in front of the camera at major media outlets including CBS-TV, ESPN, ABC-TV, Univision, and CNN as a result of the training and experience they received. Anchors and reporters including Darlene Rodriguez at NBC-TV, Dean Memminger at NY1, and Nicole Johnson at FOX 5, started their careers in television at BronxNet.

Lehman College, Hostos Community College and their Center for Arts and Culture – along with several other colleges and educational facilities – are among the institutions that have embarked on jointly-produced projects with BronxNet. Lehman College students and faculty, in partnership with and/or under the guidance of BronxNet professionals, have produced dozens of regularly featured public affairs programs. One such program is "The Bronx Journal on BronxNet", a model program based on the school's multilingual newspaper and produced by students under the guidance of Lehman College distinguished professor Miguel Perez and BronxNet professional staff. BronxNet's relationship with Hostos Community College's Center for Arts and Culture and Lehman College's arts programs have generated award-winning, wide-ranging arts programming as well as documentaries on the history of the people of the Bronx.

The very tangible benefits derived from the public access envisioned by Congress are ironically being eroded by recent FCC orders on video franchising and legislation in at least nineteen states aimed at preempting local government control over the rights of way. It is local government, not the FCC in Washington, D.C. that has the best sense of a local community's needs and interests. The training, services, local content, and media access that PEG provides are needed now, more than ever, as communities across the nation are being left behind in a rapidly changing media environment. Media consolidation diminishes the local voice and leads to homogenous, centralized programming. A 2008 Kaiser Family Foundation report entitled "Shouting to be Heard" found that found that cable television donated, on average, only 15 seconds per hour for public service announcements ("PSAs"). This represents half of one percent of all airtime on cable systems. Furthermore, only 6% of cable donated PSAs addressed a local issue, cause or event. PEG content and services emphasize and promote everything local from public safety to local culture and arts and college and high school sports. You won't see City University of New York basketball and other local athletics events on ESPN. You will see them on PEG channels. So now, more than ever, we have to strengthen the commitment to our communities.

It is extremely disconcerting then to see how many PEG centers in smaller communities have been shut down while others are about to be lost because of flawed state legislation and the FCC's action in preempting local franchising decisions. PEG Access is in jeopardy in many parts of the country because of efforts to undo the progress that Congress achieved through the Cable Acts of 1984 and 1992. Telecommunications giants entering the market lobbied heavily for the FCC's orders on video franchising and for state laws that have in many cases undermined the public good that comes from PEG access. This crisis is amplified by some cable and telecommunications providers not living up to their commitments in different areas of the country while taking actions that undermine public access' ability to serve its constituencies.

In too many places across the country, telecommunications and cable providers deprive citizen's access to the PEG capabilities possible with digital upgrades to the

providers' video delivery systems. Cable franchisees are required by federal law, in New York State by state regulations, and in New York City by the franchise agreement, to carry PEG programming on the basic tier of services. Often times, as in parts of Connecticut, Florida, Michigan, Nevada, and Wisconsin, a provider will banish PEG channels to a digital Siberia not anywhere near the basic cable tier. This practice is known as channel slamming.

Cable operator Charter Communications announced it will move PEG channels into the 900-channel block in Wisconsin. Charter is also seeking to move the PEG channels in Reno, Nevada from channels 13, 15, 16, and 17 to the 200's.

At the same time, some telecommunications providers, such as AT&T, degrade the signal quality with substandard resolution, not on a par with commercial stations, and create a wait time for PEG channels to be accessed by a customer

Comcast is also moving PEG channels from their traditional channel locations on the basic service tier to channel assignments in the 900's. The fact that in many places where this is occurring there is no non-premium video programming from the upper 300's to the 900's will further isolate the public's channels. When Comcast notified the City of Dearborn, Michigan that the government channel would be moved from Channel 12 to 915, and analog customers would have to pay an extra fee for equipment to receive PEG, Meridian Township filed a lawsuit. Comcast argued that Michigan's new state video franchising law negated the requirements of the federal Cable Act. The courts found the Comcast argument flawed and issued a temporary restraining order while the matter is further litigated.

Communities where channel slamming is occurring are left vulnerable and defenseless without opportunities to contest these unilateral actions. In many cases this is because it can be expensive and problematic to obtain injunctive relief. There needs to be a federal ban on channel slamming. Cable and telecommunications entities are committing acts of channel slamming across the country and it must stop!

Also, digital functionality, interactivity, video on demand, and high definition are ideally suited for 21st century PEG access services, while fulfilling the needs of communities in a digital age. It is ironic that while cable and telecommunications companies advertise the availability of hundreds of video on demand ("VOD") channels for pay they cannot provide a single VOD channel for PEG access to serve the public good. As enhanced technologies become available, it is natural and vital that PEG programs, services and media production training be part of any system upgrade. The public and PEG channels must not be left behind!

In addition to channel slamming, signal degradation and inferior deployment for PEG channels, some cable providers are pricing PEG out of reach for many viewers by requiring the purchase or rental of additional equipment to view PEG channels. In New York, New Jersey, Michigan, Connecticut and other states, cable providers have indicated to municipalities that analog cable customers will have to pay an extra monthly fee ranging from $4.50 - $ 6.50 per month to receive PEG channels in addition to the regular cable bill. This discriminatory practice pushes what is intended to be open, accessible and inexpensive programming outside the reach of many consumers. The PEG channels are required to be on the basic cable tier of service available to the subscriber. PEG is meant to be a resource for all regardless of economic status and that is why PEG services are free to the public.

PEG plays a vital role in public safety, providing emergency management information and alerts on a highly local level. Weather emergencies, amber alerts, road closings, and information about school closings are communicated through PEG channels across America. The Jersey Access Group member stations are particularly adept at communicating important local and relevant information through bulletin boards, programs, text crawls, and PSA's. PEG centers in New Jersey and elsewhere provide access to the local municipalities, police departments, and the Office of Emergency Management to post crisis management and other information on the channels. What happens to access to this vital local information when the cable providers in New Jersey banish the PEG channels to a digital Siberia and start to charge analog basic cable

customers a rental fee for an extra box to experience PEG? Channel slamming in New Jersey, New York and elsewhere is occurring now and must be corrected. We need to work together to protect this valuable resource -- the people's channels.

PEG access television provides a vital forum for local independent media, media literacy and education. PEG serves as a bridge between constituents and our leaders, contributes to community development, and is a manifestation of our democracy in a digital age. There are vast numbers of passionate people committed to enhancing the way PEG serves our communities across the nation. But we cannot provide service if our hands are tied by state legislatures, the FCC and service providers. We need the help of this committee to protect the future of PEG access and to ensure that PEG access continues to be a place for local community based media.

Before issuing its video franchising orders, the FCC did not study the possible impact on PEG. The FCC also relied on a flimsy record. As my colleague Barbara Popovic of CAN TV, testifying on behalf of the ACM and the Alliance for Communications Democracy, requests, this Subcommittee and Committee should have the Government Accountability Office conduct a study of the impact of the FCC's video franchising orders and the new state video franchising laws on PEG access centers across the country. We fully support this recommendation. We also fully support her recommendations that the Subcommittee and Committee (1) prohibit funds from being used by the FCC to implement or enforce its video franchising orders, and (2) compel the FCC to reconsider those orders in light of their adverse impact on PEG access.

We also urge the Congress to take concrete actions to ensure the vitality and viability of PEG.

- The FCC's video franchising orders incorrectly limit the definition of capital costs that franchising authorities can request that do not count against the 5% franchise fee cap. We ask that you correct this misreading.

- The Cable Act requires that PEG be on the basic service tier and be treated like broadcast channels. We ask you to provide protections for PEG against 'channel slamming' and ensure that the quality and functionality of PEG channels is no less than any other channel on a cable system.

- Digital functionality, interactivity, video on demand, high definition, and other upcoming technological advances are ideally suited and integral for 21st century PEG access services for our nation. We ask that you direct the FCC to conduct a study on technological needs for 21st PEG services.

We thank you for your commitment and important work on behalf of the people of the United States.

Mr. SERRANO. That is the way you always end the programming. Thank you so much.

Before we move on with the questions, a personal gripe and question.

First of all, the members know I do this with everything since becoming chairman, I ask the question: Are the territories included? In the activism to preserve PEG channels and in the coverage that cable companies and the New York companies coming in have, are there any territories that do not have the services, to your knowledge?

Mr. Symons? I mean, cable television.

Mr. SYMONS. To my knowledge, no. The Cable Act covers cable operations in all the territories as well as the States.

Mr. SERRANO. I know that. But those services are available?

Mr. SYMONS. Yes. To my knowledge, they are.

Mr. SERRANO. And as far as the activism to save public access, are the territories also active in this fight?

Ms. POPOVIC. We are local people, and we are spread around the country. And there are many thousands of us. What you find, though, is that in some situations the city has not chosen to activate PEG channels. But we are throughout the country where the city has seen the value.

Mr. SERRANO. But outside the 50 States, is there an activist movement on behalf of PEG channels within the territories, to your knowledge?

Mr. KNOBBE. There are very robust PEG facilities in Puerto Rico. And they have a slightly different model. They are kind of like PBS, but they offer training for the public. And I have met some of the leaders of the stations down there, and we are looking to collaborate. They are actually an amazing model for this industry.

Mr. SERRANO. I know their programming, which brings me to my gripe. Their programming comes through New York through WAPA America.

Here is my gripe, just trying to figure out how this works. Cablevision in the Bronx gets me for a couple of bucks extra a month, I think it is about 25 channels from Latin America.

Most of the time, Mr. Kirk, when I get on the House floor, when I speak about Colombia or Venezuela, I am speaking from information I am getting where I see people who oppose and support President Chavez going at it, rather than getting a filter through CNN or Fox or CBS and so on.

Now, I have Comcast here locally, and I wanted that package. But that package doesn't include the station from Puerto Rico. When I go online to get it, because you could see it online, it tells me that I can't access it online because it is available in my area. Yes, it may be, but it is not available through my cable system.

So how does one deal with that? Is that just Serrano griping? Is that a problem elsewhere? In other words, I can't get it on my laptop, and I can't get it on my TV set because it is not included in the Spanish Comcast package.

Mr. SYMONS. Mr. Chairman, I am not familiar with the specifics of that, but I will check with Comcast and find out.

Mr. SERRANO. And I guess better to check, the other question, which is, if it is available in an area, does that automatically knock

it off online, but it could be available by another provider in the area, not the one you have?

Mr. SYMONS. Right. That is right. Because multiple providers—we have Cox here as well as Comcast.

Mr. SERRANO. Okay. In adopting rules and guidance that reduces the ability of localities to impose specific franchising requirements, including PEG requirements, on potential new entrants, the FCC appears to have made the decision that, in this instance, the goal of reducing barriers to competitive entry outweighs the goal of local fostering localism. And where the FCC rules also would reduce or eliminate the ability of localities to impose specific franchising requirements on incumbent cable providers once competitive entry occurs, the FCC appears to have made the decision that, in this instance, the goal of creating a level competitive playing field outweighs the goal of fostering localism.

While I appreciate all the arguments made in support of promoting competition as well as those made in support of promoting localism, in my opinion, localism must not be diminished in importance. So I ask the FCC, what are the FCC's views regarding the relative importance of localism with respect to PEG requirements? And, have those views evolved in recent months and years?

Ms. DESAI. First of all, I would respectfully disagree with the premise of the question. The 621 franchising orders did not change the ability of the local franchising authority to choose whether or not to require PEG. It didn't change the ability of the local franchising authority to choose how to allocate the revenues they collect. And, it didn't change the amount—and the franchising orders didn't change the amount of money that they are allowed to collect from cable operators and their customers.

I would respectfully suggest that the balance that is in place was set by Congress. Congress specifically said that the local franchising authorities had to cap the franchise fee at 5 percent. So that was the maximum amount that they could pass along to cable operators and their customers.

What they could charge on top of the 5 percent and what is stated explicitly in the statute is for capital costs related to PEG facilities. If Congress wants to change that balance, I think that is completely appropriate for Congress to do. But what came up in this 621 franchising proceeding were reports from potential new entrants that said they were unable to get a foothold in locations because local franchising—some local franchising authorities were attempting to collect fees above and beyond the caps set by Congress.

Mr. SERRANO. Well, my follow up to that question was going to be, if Congress were to determine that localism is too important a policy goal to be endangered by State laws that undermine local requirements, what actions do you suggest Congress take in regards to these FCC actions? So, in addition to what you spoke about, is there something else that Congress could do to deal with this issue?

Ms. DESAI. I think, if what is resulting isn't consistent with what Congress intended when it set the statute, when it enacted those very specific provisions, I think Congress can go back to what was in place and allow cable operators—I mean, allow local franchising authorities to completely cover all the cost of PEG programming,

both capital and noncapital, costs above and beyond the 5 percent that was already—that has been set in the statutes. So it is something that Congress could do.

Congress could, if it believed that the 5 percent wasn't enough to charge cable operators and customers, it could increase that amount; and/or it could, instead of giving local franchising authorities a choice of whether or not to require PEG channels, it could require local franchising authorities to have some PEG channels.

Mr. SERRANO. Cable operators don't complain to the FCC that they are going broke. Do they?

Ms. DESAI. I personally haven't heard that complaint.

Mr. SERRANO. I suspect you may not.

The recent FCC cable franchising orders appear to have thrown into question what payments local franchise authorities may require from cable operators to support PEG services. Despite the legislative history of the 1984 Cable Act, which indicates that payments for services, in addition to facilities and equipment, may not be considered part of the franchise fee, the FCC order seems to take a more narrow view of the capital cost that cable operators may be required to pay for PEG support over and above the franchise fees.

So, for all witnesses, but starting with the so-called PEG advocates, how does the FCC position on capital costs and franchise fees affect the financial resources PEG broadcasters have available? Have broadcasters been forced to cut back on programing because of reductions in financial support?

Ms. POPOVIC. You can't put cameras in a studio and have no people to operate them. You can't offer a training program and have no one to conduct them.

This arbitrary and unreasonable separation of capital and operating costs for PEGs makes no sense, and it never has. And I would agree with Monica Desai, that Congress taking a hard look at this unnecessary restriction on capital costs paid above the 5 percent is something concrete that we would look to Congress to do.

Mr. SYMONS. I would actually agree with the FCC, that the 621 order properly reflects the balance struck by Congress back in 1984.

And on another personal note, I will go out on the limb here. I was senior counsel to the House Telecommunications Subcommittee in 1984, when Congress passed the Cable Act, and this issue was very thoroughly debated and the compromise, the balance that was reflected in section 622 very carefully considered. For franchises that were in effect prior to 1984, noncapital costs were not counted against the franchise fee cap.

But post-1984 Congress made this distinction between capital costs, which were not subject to the cap, and other contributions to PEG, which would be subject to the cap. Now let me hasten to add in the 20, almost 30, 25 years since the enactment of that statute, many cable operators have continued to provide support for PEG, noncapital support for PEG over and above the cap, but that was the balance the Congress struck.

Mr. SERRANO. Mr. Knobbe.

Mr. KNOBBE. The FCC order we believe too narrowly defines that definition of capital expenses or what is considered appropriate

above the 5 percent franchise fee. And the idea of taking a look at updating the Cable Act with the new telecommunications act, as well as I guess having some of our legal counsel address technical points within the existing Cable Act framework, which does provide and we believe permits there to be above and beyond the 5 percent support for PEG. So it is important that we not go backward, and I think that I can provide through counsel information regarding some of the technical points and the nuances of that narrow, that we believe a narrow definition. I would agree with Monica Desai that perhaps this also is something we can look at working through our elected leaders.

Mr. SERRANO. Thank you.

I am going to recognize Mr. Kirk, and after Mr. Kirk, I would recognize members of the committee in the order that they attended the meeting. And I would remind them not to misbehave like the chairman or the ranking member and stick to the 5-minute rule.

Mr. Kirk.

Mr. KIRK. Thank you, Mr. Chairman.

Just to reiterate what we talked about privately, for this subcommittee, that now we have reports that there may be short-selling runs on WaMu and Wachovia, which could jeopardize further big retail banks. And with press reports now you know that FDIC may have inadequate resources, my hope is the leadership, which really only has one stimulus package bullet to shoot, doesn't miss this one. We talked, and you will be taking that up with your team, and I hope that that does happen.

On this subject, if we let the marketplace fully rule, looking at my wife and I, our TV habits, we would have ESPN 1 through 50, E channel 51 through 100 and call it a day. I might not want to have the marketplace offer just that, because of the vital role that local access plays in democracy. And even though there are 9.2 people watching at some point, it is the 9.2 people that are watching the local jurisdiction talk about paving over their house. And so this is a vital service, I think, that is provided.

With regard to proposals then to take local access off of the basic channel selection and move them into what I would regard as digital Siberia over in On Demand, and not just easily found On Demand, buried deep within On Demand.

Monica, in your testimony, you said, "We believe that placing PEG channels on any tier other than the basic service tier may be a violation of the statute, which requires PEG access programming to be placed on the basic service tier." And what they will say, is hey, man, it is on the basic service tier because you don't have to pay for it; you just can't find it.

And then you say, "subjecting consumers to additional burdens to watch PEG channels defeats the purpose of the basic service tier," which sounds to me like the Commission would then say exiling PEG to On Demand and deep within it is a violation of the statute in your view. We believe it is important that your consumers are able to get access equally to all channels belonging to the basic service, and this should be the case regardless of what type of system the channels are being carried on, meaning whether it is digital or analog.

And so my question is this: What are your plans to implement your testimony from the Commission to make sure that AT&T is forced to bring PEG back to the basic tier, so that they have a channel somewhere between 1 and 100 on the basic service tier, and are not exiled to On Demand?

Ms. DESAI. First, I think it is important to clarify that I am speaking as chief of the media bureau at the FCC. I cannot speak on behalf of the commissioners. But I would be anxious to place this issue in front of the commissioners for them to decide with our view that this would be a violation of the statute. But what we would need is to have a specific and formal complaint filed in front of us. We would need something to act on. And then we would look at what was filed and look at the law, look at the statute and give our recommendation.

Mr. KIRK. And does Michael or Barbara have standing to put that complaint before you?

Ms. DESAI. I would think so, yes.

Mr. KIRK. All right, okay. So then I assume you will get that later this afternoon. And then you would put this then before the Commission.

And how would this then move forward? You know, obviously you haven't formally prepared this, but you put before the Commission that a ruling of exiling local access to On Demand, in our view, is a violation of the statute. And then there would be a rulemaking procedure that would go forward?

Ms. DESAI. It may be an enforcement proceeding. It would depend on whether there is, what exactly was filed in front of us. If there is a petition for declaratory ruling, it may be a ruling by the Commission if they chose to act on it. If there was a formal complaint, then you move through an enforcement proceeding.

Mr. KIRK. Generally, an enforcement proceeding would then require that AT&T is reversing its decision and bringing local access back to the basic channel mix by when, in a month or a year? How long in general do enforcement proceedings take to put into place?

Ms. DESAI. I apologize, I don't know off the top of my head, but I will definitely get back to you. In part, that would depend on how quickly we were able to move this forward to the Commission, and how quickly the Commission would vote on an item. But I will find out for you how quickly typically a company would be required to come into compliance if the Commission determined that they were in violation.

Mr. KIRK. One other question, say you are a random congressman representing the northern suburbs of Chicago and planning on a nice Saturday evening at home, and instead, Hurricane Ike shows up in its journey through the gulf, so we have flooding throughout Des Plains, Mount Prospect and Glenview. Everything is shutdown, all roads, emergency services are tasked out the yin-yang, and no ability to get that information out via the AT&T provider, because Mount Prospect showed me the complicated procedure it now takes to put out information on where the flood is, who is wiped out. We had a couple of fires. I spent most of Saturday night loading sand bags with a couple of hundred Navy recruits, and yet we are having difficulty getting the emergency information out. Have you engaged on that issue as well, because we exiled this

all to digital Siberia. Especially for seniors who are suddenly being flooded out of their homes, they can't even find the channel to get the village information.

Ms. DESAI. Sure. I mean, public safety, there are absolutely public safety implications.

Mr. KIRK. Right. Is that a separate issue in your mind or is that the same issue as just digital democracy of making sure that folks can find the channel?

Ms. DESAI. I mean, I would have to think about it. I think the statute is pretty clear in its language. And I——

Mr. KIRK. Do you have higher or separate standards with regard to conveying emergency information?

Ms. DESAI. I think that always influences Commission decisions, absolutely something that they take into account.

Mr. KIRK. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

It is interesting that I hear you speak on this subject, Mr. Kirk, that it is not just public access, but it is physical access. It is also being able to find it. I saw a video on You Tube, of all places, that explains the set up where you have to go to channel 99 and then go through a menu and try to get one, and then there is 30 seconds, 90 seconds.

So my biggest complaint is I used to get two Western channels, and now I only get one.

Folks, lighten up.

My colleague, my dear respected colleague, Ms. Kilpatrick, is recognized for 5 minutes.

Ms. KILPATRICK. I heard that, sir.

Thank you very much and thank you for coming. When I came in and read my staff's work, I thought it was FCC that I was going to be damning today, but I am not quite sure where it fits.

So I am trying to put this where I understand it. Regulatory shift is what you said, Ms. Popovic, I like that word, but as we go on, I think that is still in play, from channel slamming to my judge, Judge Victoria Roberts, who you referred to—Knobbe?

Mr. KNOBBE. Knobbe.

Ms. KILPATRICK. Who did rule and put a stay, in my words a restraining order, that they could not go ahead, because what she called it was unreasonable discrimination, which the statute does speak to. And so she ordered that it be restrained for a while.

And now we find that the box that you have to have to receive the PEG channels, there is a cost of $4 and up, or else you can't see it. The placement of the channel itself is now in question. It is an educational, as well as a security, and service, and education to the people of this country that they have such a thing.

So I wasn't sure, Mr. Symons, if I was going to blame you. In my area, it is Comcast, and we are outraged about the cost, first of all, of cable, and that is not in this discussion, but I hope we will have it. It goes up, we have 100 or 200 channels, and there is about four of them that you watch, so that is another discussion for another time.

What do your buttons say by the way?

Ms. POPOVIC. "Keep connected."

Ms. KILPATRICK. Love it. Let me have one of those before I leave.

But, no, really, it is important, a lot of people don't just watch the movies and Discovery. A lot of people do watch PEG channels and get a lot of information, which I think in a lot of cases is way better than network and CNN, because you get something, and they feel like they are teaching their children with it. So from channel slamming to unreasonable discrimination regarding the boxes and then moving them to 900 instead of the first 100 or so, that is a real problem.

I think what Ms.—I am going to say Monica because I don't want to mispronounce your name, I hope you will have a complaint, and we don't know if it is going to be enforcement or whatever. But I want that to come together because I think the PEG channels, to lose them and AT&T with its U-verse, I am considering U-verse as we speak because my cable bill has gone from $100 to $130, and today it is $180. That is outrageous. And in our town, where a lot of people are laid off, I am blessed that I can pay it, but a lot of places, they can't pay it because they are paying their gas and lights and food and rent and all of that.

So I want you to come together in some kind of way. I don't want you to be adversaries. I would like to stay connected, and it is not just for the association; it is for the 650,000 or 700,000 people that we each represent. And how we go about that, yes, FCC has a role. And Kevin Martin is a great guy, and you know your stuff real well. All of you all do.

The cable association, you have a role to play in this, too. I don't want to see PEG regulated to some substandard something. It ought to be right up there with all the other major channels, and whatever we have to do to get it there. It sounds like it is a regulatory something as well as a people something. And if we have to mobilize America to educate them to what it is, I think we have to do that.

I don't know that I have a question, except to ask anyone who can answer, Judge Roberts, when she issued her restraining order, said that she felt that it was unreasonable discrimination and that Comcast did not give property notice.

And I guess that is to you, Mr. Symons, I guess you would know a bit about the order. What is the status of it? And how do we go forward from this? And can you all keep the PEGs up, or what do we have to do to beat you over the head to do that?

Mr. SYMONS. You don't have to beat us over the head.

Ms. KILPATRICK. Good, right answer, that was the right answer.

Mr. SYMONS. As you may know, around the time the lawsuit was filed and just after Judge Roberts' order, the Telecommunications Subcommittee held a hearing, and Comcast appeared and assured Chairman Dingell that they were going to work together with the City of Dearborn and fix this. My understanding is that there have been many meetings between Comcast, the public access community in the City of Dearborn, and they are making progress on that. They are going to work it out. Comcast committed to Chairman Dingell. They are going to work it out, and you don't make a commitment to Chairman Dingell without making good on that so.

Ms. KILPATRICK. Right. And that is my subscriber, but I am sure all of the other cables, and you represent the network, the cable association or whatever. Do you take it, because the others didn't get

Dingell, that they don't have to do it, or are we going to do a comprehensive something?

Mr. SYMONS. I think everybody understands, everyone in the cable industry, the operators understand the importance of PEG and want to make sure it remains a viable part of the cable lineup.

I draw the distinction between what Congressman Kirk was talking about, which was making public access channels into some sort of video On Demand product; a number of you watched that You Tube video that AT&T does. That is not something we do.

We do, we have some of our companies that have gone digital have moved their PEG channels. Now I guess I take issue with Mr. Knobbe's characterization of it as channel slamming. I think, as you move into a digital environment, there are a lot of challenges with that. There are a lot of benefits. There are a lot of challenges to it.

Ms. KILPATRICK. Hold it right there, because this is my last 30 seconds. You are right. I don't want to slam. I just want you to get it done because it is an educational, security, yackety yack, thing for millions of families in America.

Mr. SYMONS. Well, we want to work with them and make this happen in a way that works for everybody, strikes the right balance and gets everyone into a digital environment, which, in the end, is good for everyone.

Ms. KILPATRICK. At the lowest, most cost-efficient price available.

Mr. SYMONS. Absolutely.

Ms. KILPATRICK. U-verse, or AT&T, don't let them off the hook. They have a commitment. We approved them. Sometimes, I know the U.S. Conference of Mayors were opposed to it because they thought they would lose some of their whatever. Now they are operating in my area in some places, and they are phasing in, but they have a responsibility for PEG, too. I want FCC to be on top of that.

Thank you very much.

Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman, for this hearing and bringing attention to this issue.

A couple of questions, but before I ask the questions, I can't help but respond briefly to what was said by our friend and colleague, the ranking minority member, in his opening remarks with regard to the adverse economic circumstances as a result of the failure of oversight and regulation. And it is important to understand that the failure of this oversight and regulation goes back to the first 6 years of the 21st century and were initiated by former Senator Graham, who curiously enough is now the chief economic advisor for Senator McCain. So I just wanted to get those facts on the record so the situation is more clearly understood.

I thank you very much for being here. The first question I have is a local question. I have a public access station back in my district in the City of Binghamton that, unfortunately, is not provided with the facilities and training by its cable service providers. So I am wondering what you think could be done so that the Federal

Communications Commission will have the authority to enforce perhaps a Federal minimum of financial support that could be provided by cable service providers so that rural areas generally have the same capability for public access as do larger cities.

Mr. SYMONS. Well, Congressman, today, under the Cable Act, if a franchising authority wants a cable operator to provide channels and facilities for those channels, it can order that, and failure to comply with the franchise would be something that could be challenged.

With respect to funding for services and assistance, again, that is something that the local franchising authority works out with the cable operator. I think in every circumstance where they ask for it, where the local franchising authority asks for it, the cable operator and the local franchising authority works something out. So I am not aware, if there isn't that kind of funding in the Binghamton area, I don't know whether that is a function of the franchise or whether, when they negotiated the franchise, they didn't think it was necessary; now it is. But I assume, and I think Time Warner is the provider in Binghamton, maybe something could be worked out. I am happy to go back to Time Warner and get some details on the situation.

Mr. HINCHEY. Thank you, I appreciate that.

I wonder if I might use your first name?

Monica and Barbara, if you don't mind responding to that.

Ms. POPOVIC. I am Barbara. Go ahead.

Ms. DESAI. I would agree that, under the Communications Act, the local franchising authority has discretion as to how it wants to allocate the 5 percent tax it collects in revenue from cable operators and their customers. So if they wanted to support those types of noncapital costs, like salaries and training and the other types of operations you were talking, they could.

Mr. HINCHEY. They could, yes. But I wonder if there is anything that we could do that would enable the FCC, if the FCC might be interested, in ensuring that those kinds of things take place.

Ms. DESAI. If Congress wanted to change the statute to say that capital and noncapital costs could be passed along above and beyond the 5 percent, then it would be up to Congress to do that. If Congress decided to change the balance of the 5 percent and decided, well, instead of charging cable operators and their customers 5 percent, we decided to move that up to 7 percent or some other number and with the requirement that some percentage be allocated to PEG as opposed to giving local franchising authorities that discretion, that is something Congress could do.

Mr. HINCHEY. Thank you.

Ms. POPOVIC. I really appreciated that Monica Desai keeps going back to the statute because I do think there are weaknesses in it.

And I think you have just pointed out why, Representative Hinchey, because when small communities don't have this, it is a great loss. And what we have seen around the country is where it has developed, it has been an awesome and important local benefit. So the idea of minimums, the idea of how do you set a platform below which the industry cannot go, I am all for it. I think we need protection, and we need your help to make that happen.

Mr. HINCHEY. Yes, I agree. Thank you.

I have one other question. The State of Illinois was able to bring all interests together and bring a solution to keep PEGs thriving while also allowing cable companies to negotiate statewide franchises. The terms that they reached serve as a model for the FCC to change their regulation so both cable companies and PEGs really come out in better conditions than they were. How do you think the FCC could use the success of the State of Illinois and New York City as a model for new PEG policy are to us at the Federal level?

Mr. SYMONS. Congressman, I think, again, the balance that was struck and is currently struck in the statute with respect to public access channels, PEG channels, is the right one, where the decisions about the number of channels and the nature of the services is really done at the local level. The current Federal law gives wide discretion to local governments to negotiate public access channels. I am not sure you can give them much more that broad grain of authority to give them what they need and want and what kind of facilities they can use. You get more detailed than that, and in some sense, you may wind up restricting the local governments.

Ms. POPOVIC. I appreciate your comments about Illinois law; I worked it on. But I will be the first to tell you that there are big problems in State legislation that is out there. What we did in Illinois is we clung to the cliff. And we were able to reverse a train that was already moving in a wrong direction for the public. So I am proud of the fact that we were able to get what we got, but frankly, State law, the way it stands in the 19 States where it exists, goes from barely acceptable to awful.

So I would prefer that based on some of what I heard Mr. Knobbe talk about, and I have seen in New York, and what you all have done for the people in New York, is that that is a stronger model. Local franchising still exists. You are standing up for your PEG centers.

And I think that Representative Kirk pointed out that you can have very well-worded and good law, and a major multibillion dollar company is ignoring it. So we have got some problems with the models that are out there now. And I do think we managed to turn around a near disaster, but I think we can do much better, much better.

Mr. HINCHEY. I thank you very much.

Thank you, Mr. Chairman.

Mr. SERRANO. You, I alert all members that there will be a second round of questioning if you are interested. The one thing we know for sure is I suspect this hearing will be on a lot of PEG channels throughout the country, and you guys will be huge stars.

Mr. Visclosky.

Mr. VISCLOSKY. Thank you, Mr. Chairman.

The first request I would have is to enter into the record a 1-page letter from Sheriff David E. Lain, who is sheriff of Porter County, Indiana.

Mr. SERRANO. Without objection.

[The information follows:]

Porter County Sheriff's Department

David E. Lain
Sheriff

Douglas E. Snider
Chief Deputy

Dear Congressman Visclosky:

September 10, 2008

As you are deeply committed to the people of your district, I am compelled to ask that you help to reinstate a valuable commodity to the people of northwest Indiana. If possible I would like to enter the following statement before the Congressional Subcommittee's hearing on PEG programming:

For nearly eight years, public safety and non-profit organizations alike benefited from access to the public airways through a portal known as "Behind the Star". This television program aired first on Comcast, then AT&T cable companies in Lake, Porter and LaPorte counties. The show, a product of the Porter County Sheriff's Department had a mission to inform the public as to the programs and personnel of that agency, as well as other police departments across the three county viewing area.

We were able to inform those we serve of new initiatives, solicit feedback, promote events and generally stay in touch with the people with whom we partner to create a safer environment. Additionally, Behind the Star invited guests to appear from other branches of government (such as Congressman Visclosky) as well as representatives of countless non-profits like United Way, the American Red Cross, the American Cancer Society and others.

Church and community leaders and school children from elementary grades through high school also appeared to showcase not only their good works and events, but to highlight that the Sheriff's Department was an integral part of community life. The show vastly improved the "comfort level" felt by citizens toward their police officers.

Sadly, that all came to an end in December of 2007 when local access to cable ceased to exist. So many organizations have suffered due to losing the voice afforded them by appearing on Behind the Star. It's impossible to say how many similar programs went dark last December.

In an age when mass communication has the greatest potential for binding our communities together, we see the simultaneous decline of newspaper readership and the loss of "the common man's" access to public broadcasting. This can be called anything but progress.

Thank you for your time.

Sincerely,

Sheriff David E. Lain

2755 State Road 49, Valparaiso, IN 46383 Phone: (219) 477-3000 Fax: (219) 464-8068 **www.portercountysheriff.com**

Mr. VISCLOSKY. Thank you very much.

First question I have, Ms. Desai, is, has AT&T requested a waiver for the emergency alert system?

Ms. DESAI. I believe that it has.

Mr. VISCLOSKY. What is the status of that request?

Ms. DESAI. I apologize, I don't recall off the top of my head, but I will get back to you on that.

Mr. VISCLOSKY. Do you know why the company made that request for emergency alert system, for a waiver?

Ms. DESAI. I do not. I just don't have that information, but I will get back to you on that.

Mr. VISCLOSKY. You will provide that for the record, and what the status is?

Ms. DESAI. Sure.

Mr. VISCLOSKY. Is it Symons?

Mr. SYMONS. Symons.

Mr. VISCLOSKY. Mr. Symons, it is interesting, my colleague from New York mentioned that he had a parochial question and Ms. Kilpatrick also referenced a situation in Michigan. I think if every Member of Congress was here, they would have a parochial interest, which I think really evidences the broad ranging problems and concerns people have with cable and with access.

What happens to the constituent in, say, southern Indiana, that I don't represent, who doesn't know Mr. Dingell? What happens if somebody has a complaint and they don't have Mr. Dingell to go to bat for them to get a problem solved?

Mr. SYMONS. Well, Congressman, I think, while the Dearborn case has been well publicized, it is not the norm. I take your point about not everyone can call up Chairman Dingell. I think, given the number and nature of cable systems out there, the challenges that attend the digital transition, while there are complaints and I don't want to minimize them, they are not widespread to the point where people are losing these channels everywhere.

I think things are changing; technology is changing. I know you bring Sheriff Lain's letter into the record, and I heard Barbara talk about that. But in Indiana, for instance, under the State law, local governments are charged with taking over the public access business, and Comcast offered to turn its facilities over to local governments, and so far they have no takers.

Mr. VISCLOSKY. I will follow up on that in a minute.

Is Verizon a member of your association?

Mr. SYMONS. No, it is not.

Mr. VISCLOSKY. So I can't ask my rhetorical question.

Mr. SYMONS. I would be happy to speak on behalf of Verizon.

Mr. VISCLOSKY. Let me then reference a couple of your comments in your opening statement. You mentioned that "the cable industry has long been a supporter of PEG programming. For over 30 years, cable operators have spent millions of dollars each year to construct local studios and other facilities necessary to produce this programming . . . this commitment of channel capacity, funding and assistance ensures that all members of the community can stay in touch with town meetings and other activities of their local government and take advantage of tutoring or other community

communication programs . . . the good news for PEG programmers today is that cable intends to continue its commitment."

The State of Indiana, talking about State law changes, and you referenced the State of Indiana passed House Bill 1279 signed into law in 2006. On August 28th, 2007, Comcast sent letters to municipalities, as you rightfully pointed out, in northwest Indiana claiming there was no provision within the bill requiring them to provide production, playback facilities, even though these had been negotiated in good faith for more than 25 years at the local level.

Comcast then demanded that Hammond, Indiana, all these are Indiana communities, Portage, Mishawka, Valparaiso Plymouth, Goshen, South Bend and Elkhart, many of these communities are not in my congressional district, had 30 days to find housing for old facilities, hire staff and develop a management organization.

As of December 15th, Comcast stopped providing playback or local programing in these cities. These cities are broke. We have a property tax problem. We have job loss. They are broke. Last time I looked, Comcast was making a lot of money. Isn't there some public responsibility where there is a public franchise?

Mr. SYMONS. Yes, there is clearly a public responsibility.

Mr. VISCLOSKY. Why is it lacking with Comcast in northern Indiana? These communities encompass the entire northern part of the State of Indiana, and they pulled the rug out on them in 30 days.

Mr. SYMONS. Well, Congressman, the cable industry didn't ask the State legislatures to change the law, and they did.

Mr. VISCLOSKY. Oh, don't say that. Don't say that. I would suggest it that is not a correct statement to be polite.

Mr. SYMONS. Well, they didn't——

Mr. VISCLOSKY. And the fact that now they are not required to do something doesn't mean they don't have a public obligation to do something.

Mr. SYMONS. I take that point, Congressman, but we do provide service in a competitive environment. And if our competitors are able to forego these costs, these obligations, it puts us at a disadvantage. If Indiana wants to change the law back and treat everybody equally, but, you know, these are obligations, as you point out, Comcast had undertaken and its predecessors companies had undertaken for two decades. So, but for a change in the law, they would have continued. We can't compete against Verizon and AT&T if they are not going to undertake these obligations and we are expected to do so. They are bigger companies.

You talk about Comcast being a big, rich company. AT&T alone is bigger than the entire cable industry. And, you know, Comcast and any other cable company that wants to continue these obligations in the face of laws that eliminate them is in tough shape competitively. We are losing customers to, you know, AT&T and Verizon, are regularly competing for our customers.

Mr. VISCLOSKY. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you, just picking up on your comment, Mr. Visclosky.

Not wanting to give you a hard time, but something tells me that these laws do not get changed without the cable industry not being at the table or being aware of it or lobbying against it if they don't

like it. You made it sound like it was done, you know, in spite of what you might have wanted.

Mr. SYMONS. I didn't mean to suggest that. Clearly, once the legislative ball got rolling, cable participated in the process, but cable didn't go to the Indiana legislature and ask for these changes and in fact——

Mr. VISCLOSKY. Mr. Chairman, that is a correct statement, but my point is, you are a major corporate entity. And the fact now that the law was changed and there is not a requirement, you took advantage of it.

Mr. SYMONS. That is right. And again, I think it is tough. You look back at the history of Comcast and its predecessor company's commitment to Indiana and elsewhere, and you look at the change in the law, a change in the law for all video service providers. We compete against these other providers, and it becomes tough to maintain a costly obligation in the face of a regulatory environment in which our competitors do not take it on. It is just a fact of market under those kind of regulations.

Mr. SERRANO. Thank you.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Ms. Desai, I join a number of my colleagues in expressing my concerns on this issue in particular. I am concerned about the effect of PEG channels in my area. As in many other areas of the country, my constituents rely on local PEG channels for information about local issues, local church services, city council meetings, even information on what their congressman is doing in Washington. These are services that are important to those who watch them, and they provide necessary information.

As you know, California recently enacted a law that allows statewide franchising agreements. While competition in the cable market will benefit not only consumers but PEG channels as well, I am concerned that new providers no longer have incentive as they did with city-wide franchising agreements to continue offering the same PEG access if they decide to offer it at all.

I have a couple of questions. One, in your testimony, you expressed concerns about practices that move PEG channels to a digital tier to treat them as On Demand channels. I want to ask you, what action the FCC has taken to ensure that PEG channels are accessible to all cable customers?

I want to mention one or question as well, and that is, California franchise regulations require new entrants to treat PEG channels the same as incumbent cable providers do. But there is a concern that certain new providers are not meeting those requirements by offering PEG channels at lower quality resolutions, not offering closed captioning, not putting PEG channels on the scrolling TV guide, and making it difficult and time-consuming to access PEG channels. Since many belive there are inadequate enforcement mechanisms in the California statute, local cities interested in protecting PEG access for the citizens may have little recourse aside from civil action to ensure that PEG channels are accessible. So I would also like to ask you what tools the FCC has at its disposal to ensure that companies are complying with their franchise agree-

ments, and what advice you have for local communities struggling with issues of noncompliance?

Ms. DESAI. Sure, once we have a formal complaint in front of us, the staff would be able to evaluate that complaint and bring it up to the full Commission to evaluate. We actually don't have something in front of us right now that we can act on. So, you know, what I can tell you, that my view is those practices would violate the straight terms of the statute. And I should also clarify that I am speaking as a chief of the media bureau; I don't have the authority to speak for all the members of the Commission. But I can tell you that what the normal process is; if we have a formal complaint filed before us, we evaluate it and then give our recommendation working with the enforcement bureau, and that would go to the full commission to decide. But we need something to act on.

Mr. SCHIFF. So it would be your opinion, though, that putting the PEG channels, combine them all on one channel and making you go through a menu to find them, basically making them more inaccessible than other channels you think would violate the statute?

Ms. DESAI. Right. The statute requires PEG channels to be placed on the basic service tier along with your local broadcast channels. So to place additional burdens on consumers to have to find their PEG channels seems to defeat the purpose of the basic service tier.

Mr. SCHIFF. But unless someone files a formal complaint, the FCC can't take action?

Ms. DESAI. There is nothing specific in front of us that we can act on. There is no petition for declaratory ruling. There is not an actual formal complaint filed on the issue.

Mr. SCHIFF. I would think——

Mr. SERRANO. If the gentleman would yield.

Prior to your arriving, Mr. Kirk had gotten two of these folks ready to start writing their complaint out.

Mr. SCHIFF. Okay, very good.

I am surprised that it really requires that. I mean, I would think that if you have an oversight responsibility in this area and you see major companies who are not complying with the statute, that you have the authority on your own to take action to communicate with the companies that this does not meet the requirements of the statute. If the companies still fail to take action, I would think, on your own authority, you would have the action to step forward. It may help as a practical matter to have a private party or other party municipality file a formal complaint, but I shouldn't think that is necessary. What is it about the statute, your own governing authority, that makes you think you need a complaint to take action?

Ms. DESAI. You know, I am not sure what is in the statute, but generally, the practice is we take a specific issue that has been brought to us, that is in front of us in a formal way, and then we evaluate that issue and bring it before the commissioners.

I can tell you from personal experience. I can get back to you on the statutory or legal authority issue if that is right. But I can tell you, from personal experience, there are times when if we have brought an issue in front of the commissioner, sometimes the question is asked, why are you bringing this issue to us? No one has

complained to me about this issue; if no one has filed on this issue, there are so many issues to work on, why aren't you working on the ones where people have filed something formal?

The general practice is there is something specific to act on. And actually, we spoke with the Alliance For Community Media about this issue as well when they brought it to our attention last year when the issue came up in Michigan, and Barbara can speak to that probably more fully. But we did explain that it would be helpful to have a formal complaint so that we can actually in a formal vehicle bring this issue to the commission or through the enforcement bureau to act on.

Mr. SCHIFF. Do you also believe that the failure to provide the closed captioning, as is the situation with the AT&T Uverse PEG product also would depart from the statutory requirements?

Ms. DESAI. I would have to look at the closed captioning rules specifically to see if there would be a violation, but it appears that, depending on—there are some situations where there are some exemptions to the closed captioning rule. I just don't know offhand whether they are applicable, but generally, the closed captioning rules, I would think, would apply.

Mr. SCHIFF. So, is it a general rule, if a provider is providing closed captioning on all the other channels but not providing it on PEG channels, they are not permitted to give discrepant treatment to the PEG channels?

Ms. DESAI. Well, there are definitely pass-through requirements. I don't remember the details of them offhand, but if the PEG channel is captioning its programming, generally that captioning needs to be passed through, I believe. I believe that is what the rule is.

Mr. SCHIFF. I thank the Chairman.

Mr. SERRANO. Thank you.

I must say that, when I was a ranking member on the Commerce, Justice, State, the FCC was under our jurisdiction; that whole issue came up, and it always troubled me. I asked the FCC, at that time I was spending a lot of time defending Howard Stern's right to say whatever he wanted, and he was getting fined every other day. And I said, you know, I understand some people find his locker room humor offensive, but I find Rush Limbaugh blaming minorities for everything that is wrong with the country more offensive. I won't complain about it, but why aren't you investigating him? And the answer was, the one that was always shocking and still is today: People complained about Stern; people did not complain about Rush Limbaugh.

So it would seem to me that the FCC would have to consider at some time enforcing laws that exist and not necessarily waiting for someone to complain, because you do have in this country more organized folks that can complain on some issues and others that will not.

Let me just, I know, Mr. Symons, you touched on this, this whole issue of the cost and the competition creating—could you explain in more detail why you believe that cutbacks to PEG support an appropriate response to these competitive pressures that we have been mentioning here. Aren't these alternatives to these PEG cutbacks that cable companies could have implemented? Finally, does

there need to be a more level regulatory playing field between cable, telecom, and satellite companies in your opinion?

Mr. SYMONS. Let me take each of those in order, Mr. Chairman.

First, I wasn't trying to say that cutbacks in PEG were an appropriate response to changes in technology. What I was saying was that change in technology, the major change in technology that we are all facing across media platforms is from analog to digital. And that requires a lot of work among all the affected parties, the regulators, the service providers, the access community. And we are trying to do that. Obviously, it is difficult, but I think the response is not so much—the change in PEG is not——

Mr. SERRANO. Excuse me. You did say in the testimony, in the few instances in which cable operators have cut back on PEG programming or funding lately is to respond to the competitive pressures created by the regulatory disparity.

Mr. SYMONS. Yes.

Mr. SERRANO. And the other thing that gets people like me is, whenever there is a problem where some people claim there is a cost involved, it is always certain people, certain programs, certain agencies that take the cut, and others do not. I mean, we are going to see this here. I assure you, and I don't want to get Mr. Kirk going again, I assure you that all these bailouts are going to work out to someone telling us a year or 2 years from now, when we have a new President, whoever it is, that we can't fund education at the level we want to because we paid out money, even though we are being told now that it is not going to cost anything. It is going to cost, and you know who is going to feel the brunt of it. Sure there is competition and the digital costs and so on. Why is it always, in this case, PEG that has to? I don't see NBC 4 New York or CBS complaining. I know they have their own cash, but the cable companies are not saying, boy, we have problems; we are going to charge more or whatever.

Mr. SYMONS. Well, I think there are two reasons. One is, and we talked about this, many, if not most, of the State laws on franchising that have been passed in the last 18 months to 2 years have reduced PEG requirements, I think for a variety of reasons, in part because there are other alternates for local programming, in part because the State legislatures for whatever reasons decided to reduce those.

My point to Congressman Visclosky was the legislature having decided to do that—Congress first having given to the local governments and the State government's the determination, the decision how to determine how much PEG there is going to be. The legislatures then decide to cut it back. My point is, where we face competition from Verizon, AT&T, DirectTV satellite, the rest, we need to stay competitive. And if the law is changed and the PEG requirements are reduced, then it is very difficult for us in a competitive marketplace to take on a greater cost, a greater burden on things our competitors don't have.

I think the second issue is, I think we touched on this, too, in the first round, is this dispute over whether funding for PEG services that we provide, as opposed to capital costs, comes out of the 5 percent franchise free or is over and above the 5 percent franchise fee.

As I mentioned, I think we think the FCC got that right. Our companies have historically contributed above the 5 percent fee anyway, but those kind of contributions, again, become much more difficult when our competitors are not doing the same thing.

Mr. SERRANO. Let's move on to a related subject, but the issue of quality. And this is for all. If a franchising authority requires a cable provider to set aside channels for PEG use, do you believe that there is a Federal requirement that those channels be made available in the same fashion and same technical quality as non-PEG channels. If so, what elements must be considered when determining if PEG channels are being provided in the same fashion and same technical quality?

I am not going to make comments about some of the shows that go on where the folks are learning how to put on a show and the scenery falls and so on. I actually think that is kind of cool. It reminds me of the old Jack Benny show where the scenery fell behind you. But sometimes, on the channels themselves, the quality coming through is not the same as the others. I am not suggesting they all have to be in HD at this point, but is there a Federal requirement, starting with the FCC, do you believe to provide the same quality?

Ms. DESAI. Well, there are certainly technical standards that are in place for the quality of what is on the signal and what is on the system. And so the programing that is on the system has to meet those technical standards.

Mr. SERRANO. When you say the programming, that is not speaking to the quality.

Ms. DESAI. I am sorry, I meant the technical quality. There are technical standards specifically, technical standards. I mean, what we——

Mr. SERRANO. Do you feel that they are being met, or do you have to wait for a complaint?

Ms. DESAI. Well, I would need to see the specific situation. Our engineers would have to evaluate. And the local franchising authority oftentimes has their own technical requirements as well. And then we have got requirements for the technical standards for what is shown over a cable system.

Ms. POPOVIC. Separate and unequal doesn't cut it. We can spend years talking about this. If we are around in a couple of years and come back and tell you about all the more harm that has happened, I don't think it will be a very happy day for the people.

I appreciated your line of questioning on enforcement. How can this committee help light the fire behind this, because what we are seeing is an abandonment of these channels, is an abandonment of quality in the best sense, which means the people count? So we are really looking to you, and Representative Schiff has left, but if this hearing doesn't represent having something before the FCC, then I must be missing something.

So I would really beseech you to ask the FCC to put this up on their agenda much higher so that we don't see this gradual erosion and loss that, Representative Kirk, you know, in Illinois, your constituents in a demo with AT&T were told, you can fight it or you can embrace it. That is what we are being told. So we need some

help with this. I will file a complaint this afternoon. I have no issue with that. What else?

Mr. SYMONS. Cable companies don't degrade the quality of public access channels. We don't put them on VOD. You don't have to go through a menu to get them. Where we have disagreements, it is probably over where in the line up you put them, what channel you put them on. Again, Mr. Knobbe talks about channel slamming; I think that is a little bit of a loaded term. We try to work with local communities and the access community to put these channels in a place where people can get them and educate people as to where the channels are when they have moved in a digital environment.

Mr. SERRANO. Mr. Knobbe.

Mr. KNOBBE. We can have the community interest, the public interest served with the competition, and New York City shows that. We can have competition without harmful State regulations and with the local franchising authority. That is shown in New York. But there are places in New York State and around the country that just have channels; they don't have facilities. They don't have the training that will allow people to have access to the technology to put on their programs. And at BronxNet, viewership is, well, according to independent market research, 60 percent of the Bronx watches BronxNet on some level. And if you look at all the city access centers, usage is up.

If we can protect and provide provisions for our colleagues and the public across the country, we are doing something excellent that is part of democracy in a digital age and community development through media. It is something that we are passionate about and a lot of people around this country are passionate about and all the volunteers, over a million around the country, get passionate about because the services we provide, well, there are positive outcomes, whether it be locally generated content or whether it be professional development, career development for students. The first time they are working with this technology and having this media access is through our facilities. And we have people who are Emmy-award-winning producers who started at stations like ours, who got a fast-track in their careers because of this availability and this access.

So when we partner with cable companies and cable companies are good corporate citizens, there is a lot of good that can come from that. And in New York, if AT&T in New York City, even with all of the leverage of what I consider the greatest city in the world or a media capital in the world, in New York City, even with all the leverage, if AT&T were to be negotiating and were to attempt to enter the market and provide competition in New York City, it would be a different story than the new entrant that is Verizon in terms of public interest being served.

So channel slamming, degradation of quality and making sure that our communities have the best access to the best technologies, the most cutting-edge technology, it is vital, and it is important, and we want to work with you on that.

Mr. SERRANO. You know, before I turn to Mr. Kirk, it is interesting, but right before this hearing I got an e-mail from my son. Mr. Hinchey knows my son, who is a State senator in New York. It was an e-mail he sent to a lot of folks saying, I did two shows

on BronxNet that will be played the rest of this month. Now when you think of it, in New York City, the chance that a State senator, except maybe for the Senate majority leader or minority leader, will get on NBC or CBS for half an hour to talk about issues that are directed to the whole banking industry with Wall Street is not an easy thing to accomplish regardless of who you are. It has to do with New York and the environment and so on. I mean, I don't get invited but once or twice a year because it is New York.

So when we think about PEG channels, we think of the school board or some local program and so on. But it is also a vehicle for many of us to get a message out, to instruct people. The ability to have a show replayed over and over again so that people can see it. It is not only what it appears to be. It is much more and it gives people the chance at opportunities that just don't exist.

Mr. Kirk.

Mr. KIRK. Thank you.

Mr. SERRANO. On this subject?

Mr. KIRK. You said a couple of things. I just would say, first, on Rush Limbaugh and Howard Stern, my experience is that only Republicans listen to Rush Limbaugh, and so the reason why no one is complaining is because Democrats don't tune in.

Mr. SERRANO. No, I tune in just to see how bad it can get.

Mr. KIRK. Collecting enemy intelligence.

Mr. SERRANO. I used to be——

Mr. KIRK. Whereas, with Howard Stern, I think the problems was the kids were all listening to it, but then their parents would tune in.

Mr. SERRANO. Well, Howard Stern said that 90 percent of the people who listen to him won't admit it; the ratings would be through the roof.

Mr. KIRK. Michael, you have a future career on Saturday Night Live as an imitator of Rahm Emanuel.

Seriously, with Howard, obviously, we have a struggle with satellite, and I was just thinking out of the box that a requirement that satellite carry local access, you know, you could just designate 100 channels that satellite would have to carry. That would be the hundred biggest markets. So Chicago, New York would be carried, and then, when the customer signs up, getting their zip code in, you would be probably providing local access to a very large number of Americans. And then they would have an equal burden to cable, which I think these are all authorizing committee issues, but still I do feel your pain on that.

My worry is, without an enforcement action, we will quickly see the cable industry race to the bottom by wiping out PEG as much as the Commission would let us. And obviously, our action here is to not allow that to happen.

Just provide any comments you may have on this.

Mr. SYMONS. I think trying to ensure equal obligations, a level playing field, should be a goal in this area and, I think, any area of communications policy, and that is certainly a point we made to the authorizing committee.

I would, I guess, respectfully disagree. I don't see PEG disappearing. I think PEG is going to change. It is going to have to change as technology changes and takes public access with it. I

don't think we want to see it disappear. As I said at the outset of my testimony, we think PEG has been a very valuable part of what cable is and what people think of as cable. And I think the difficulty is moving from the analog world to the digital world and all that entails and some of the difficulties and challenges that have been posed by the FCC. I don't think it is going to disappear as long as the statute stays the way it is and franchising authorities have the authority to ask for it, because, as this hearing illustrates, local franchising authorities as least as much if not more so than this subcommittee has an interest in making sure PEG continues to exist and provide that local outlet. So it will be there, and we are talking about making sure it is viable.

Mr. KIRK. When we look at leveling the playing field with satellite, you might not require the satellite to carry Wasilla cable, but——

Mr. SERRANO. Why are you picking on Wasilla?

Mr. KIRK. Yeah, at least if they are carrying Anchorage, to level the playing field.

I would say that, in my own State of Illinois, the communities involved and their approach to Lisa Madigan shows that AT&T will lose this battle politically in Springfield, just as a political observer in my State.

But let me ask Monica, I would be willing to sign a letter with the chairman to you saying, hey, get on the case here. Is that enough for you to get rolling?

Ms. DESAI. You know, I am sure a letter from you and Chairman Serrano would be taken—we would act on it posthaste.

Mr. KIRK. Thank you.

Thank you, Mr. Chairman.

Mr. SERRANO. Your cue, you took your cue beautifully. I had just turned to my right—well, never to my right, but I had no choice, and discussed with staff that we will, the subcommittee will, put this subject on the table with the FCC. That is a commitment right now. I think it is at the best interest of all involved. If the picture is not where it appears to be, then cable providers need an opportunity clear that up. And if the public, indeed as I am, is concerned that PEG channels may disappear or may be hard to reach or there is a problem with it, then it serves our purpose, too. So you went ahead, a step ahead of me. But it is the committee's intent immediately to put this on the table as a request.

Mr. Hinchey.

Mr. HINCHEY. I understand Verizon that has completed more than 124 franchise negotiations through the franchising structure in New York. I am just wondering what you might say with regard to that and what you might think about it. Specifically, what about the experience of BronxNet and the set of circumstances, what has been their response? How are they dealing with it? Also if you don't mind, has there been an effect on quality, has quality been a problem?

Mr. KNOBBE. When the new entrants to this industry sought harmful legislation in various States, it didn't happen in New York, and there are local franchising authorities. I guess New York State and other places that don't have these harmful State regulations are examples that you can have this competition and you can have

the public interest served. Because, it is 124 Verizon communities, there are 124 franchises that Verizon has already made, and counting. It is happening. In New York City, there are, I guess, cable providers and Cablevision and Time Warner, and now Verizon is entering into this market. And we recently completed an agreement with them, which is positive for the communities that we serve in New York City. And I guess we would look to that as the exception to the rule in some ways when you are looking at these other States.

So, quality, when you ask the question of quality, you know, there are times when the channels are being transmitted on old demodulators, or sometimes it is not satisfactory, the audio and video, the technical quality of what you see on the PEG channels, and it is not by any fault of the PEG facility itself, the staff or the equipment. It is the cable providers or demodulators that are contributing to poor quality. What we would like to see is, we work with our cable providers to correct that problem, and we would like to make sure that what people experience with their PEG channels, that there is no distraction or noise of poor quality as well as digital functionality issues that we would seek to have as technologies are developing, including Video On Demand.

There is something to be said for being able to access that town hall meeting that you weren't able to attend when you need to look at it to reference something. Or if you are a young person, and your child is in a school play. You want to see that play, and you were out of town when it was being featured, that video On Demand can be vital.

So quality I think is connected to these digital functionality issues in terms of high definition. If all the other channels are in high definition and right next door to the PEG channels or in other places on the dial, on the box, well, you know, PEG should be high definition. Down the road, as we enhance technologies, there is no reason to leave the communities and people that utilize PEG out because it is important that our folks, our people, our students have access to this up-to-date technology, this relevant technology.

Mr. HINCHEY. With your relationship to Verizon, do they provide you with some financial assistance?

Mr. KNOBBE. They do.

Mr. HINCHEY. Significant?

Mr. KNOBBE. Significant.

Mr. HINCHEY. In the context of the financial assistance, do they negotiate with you or work with you to effect the outcome what you are doing, including the quality and the circumstances upon which you may be focused or not focused?

Mr. KNOBBE. There is a community needs assessment that is usually completed in communities, including in New York City, and you partner with the video provider to fulfill these needs and interests.

And the agreement with Verizon provides for the ability for us to better serve our constituents in the Bronx and all over New York City through our facilities, which would be upgraded, as well as perhaps satellite facilities in the south Bronx. There was a community need and interest that determined that that is important to the people of the south Bronx, that they be able to have access

there. And along with that, we are expecting to be able to see a match from the cable provider, which is also a franchise that is being renewed currently.

And there was another part of your question; I can't remember what it was. Was there a second part?

Mr. HINCHEY. It must have been very intriguing, because neither can I. But thank you for the response.

Mr. KNOBBE. I will go back to the point that New York has the spaces where people can go in for training, but there are so many places. In your district, there is Woodstock, that does have a PEG facility. And there is Ithaca, which also has a studio and training, but there are so many places where there is just opportunity, and it is missing, and it would be important to do something about that.

Mr. HINCHEY. Yes. That is something that I think really is important.

This may have come out in the context of your response to questions, but I don't remember it myself. What is the general circumstances with PEGs around the country? Are they getting better? Are they getting worse? Are they getting broader? Are they out there more? It seems to me that in some rural areas and small cities that they are not quite as visible, not quite as obvious as they used to be.

Ms. POPOVIC. I will take that. Just to put it in perspective, CAN TV in Chicago is probably one of the largest access centers in the Nation. We operate on a budget that would not buy a 30-second commercial during the Super Bowl. You can imagine what is going on in rural America. You can imagine what is going on in southern Indiana, and yet over this couple of decades, amazing things have been done with a little bit of resource. So we see this as doable.

I think Howard Symons pointed out that there are many examples of a strong partnership with cable where the regulations have existed and we have been able to do it, but we need a floor to stand on. And I think it is important to note, the FCC order limits the ability of local franchises and so do the States.

And Representative Visclosky, when you talk about, who is going to look out for those other communities, I really admire what Representative Dingell did, but from what I hear today, we have got Representatives Serrano and Kirk and Visclosky and Hinchey. And each of you can help us move this ball forward, and we need that.

Mr. HINCHEY. Thank you.

Mr. VISCLOSKY. Thank you for holding the hearing as a Slovak from Gary, I learned something today, and that is always very difficult, so I commend you.

Mr. SERRANO. Thank you so much.

And we thank all of our witnesses today. We apologize for the interruption. It is part of what we do here, interrupt each other quite a bit.

We stay committed to the commitment I made before to Mr. Kirk and to the committee that the issues that have been discussed here will be placed by this committee officially, in a formal fashion, before the FCC to make sure that we begin to look at the whole issue and how best we can stick to the intent of the law, notwithstanding some changes that have to be taken along the way.

My message to the cable operators is not to feel that this committee wants in any way, shape, or form to create a confrontation, but rather to get all of us to come to a conclusion as to what best serves the community. Now that is the bottom line on the agenda, better service to the community, but you have the ability to provide it. They have the ability to coordinate it. And the FCC has the ability to regulate it. I think if we all do that and if we look at the fact that markets increase, not decrease, that yes, competition can be tough, but we can always begin to pay attention to those people coming in now as new entrants and remind them that the spirit of the law, if not the actual content of the law, is for them not to be different than those of you who in the early days put up these PEG channels. So, from them, we ask that they stick to the ability of community to have these channels. From you, we ask that you don't put them on channel 1003 and that you keep up the quality. And I think, in the long run, we can work it out. I really believe that. So that is my hope. That is our intent. And we thank you for your participation today. And we hope that this hearing does reach about a thousand stations throughout the country.

Ms. POPOVIC. Absolutely.

Mr. SERRANO. Thank you.

The hearing is adjourned.

Question for the Record
Submitted by Chairman José E. Serrano

FCC reliance on public comments. One of the witnesses at the hearing, Barbara Popovic, describes in her written statement an article in the NATOA Journal entitled "An Examination of the Use of Anecdotal Evidence in the FCC's Report and Order on Video Franchising." This article notes that the FCC appeared to rely heavily on industry comments and that none of the individuals' comments were cited in the Report and Order.

Please describe how the FCC reviewed and relied upon public comments from various stakeholders, including how the FCC determines which comments were cited in the Report and Order. Please respond to the concerns that there was an overreliance on anecdotal evidence provided in industry comments and less reliance on comments from local communities and PEG broadcasters.

RESPONSE: The Commission staff reviewed and relied upon all comments, reply comments, and ex parte comments that were filed in the franchising docket. While the new entrants' comments provided many examples of issues and problems they have encountered in trying to obtain franchises and thereby increase competition, the Commission also relied upon the joint comments and reply comments of numerous entities that represent the views of local communities and PEG broadcasters. Specifically, the order relies on the submissions of the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACO"), the U.S. Conference of Mayors ("USCM"), the Alliance for Community Media ("ACM"), and the Alliance For Communications Democracy ("ACD"). We also heard directly from local governments and other groups representing local governments. Collectively, these comments were cited to over 75 times.

Question for the Record
Cong. Ralph Regula
September 17, 2008

Digital Conversion:

The deadline for the mandated transition of analog to digital television transmission is 5 months away.

Ms. Desai, could you describe the requirements placed on the cable companies for the DTV transition with regards to channel access – will all cable channels be available after the transition? If you have rabbit ears on your TV set, it's clear you need a converter box. But what if you have basic cable? Finally, how will the PEG channels be impacted?

RESPONSE: The Viewability Order we adopted last year ensures that all Americans with cable – regardless of whether they are analog or digital subscribers – are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition. Specifically, cable operators must ensure that all local broadcast stations carried pursuant to this Act are "viewable" by all cable subscribers. Thus, they may not cut off the signals of broadcast stations after the digital transition. And, under the Commission's order, analog cable subscribers will not need a set-top box to view broadcast stations after the transition. With respect to PEG channels, we do not anticipate that the digital transition will have any impact on the availability of these channels to consumers.

Rep. Peter Visclosky's Question for the Record for the FCC

Hearing of the Subcommittee on Financial Services and General Government
September 17, 2008

Emergency Alert System

What is the status of AT&T's request for waiver of the Emergency Alert System? Why was AT&T permitted to launch a service that could not provide the required alerts? What amount of time is the FCC giving AT&T to rectify this problem? Is AT&T required to warn consumers of this defect in its product prior to signing up subscribers?

RESPONSE: AT&T is in compliance with the EAS requirement. On November 14, 2007, AT&T filed a request for limited waiver of the EAS rules. AT&T stated that "due to the technological characteristics of its IP-based network architecture, it is technically infeasible for AT&T to deploy EAS capability for its U-Verse TV service . . .prior to July 31, 2008." The Commission's Public Safety and Homeland Security Bureau adopted and released an Order on March 25, 2008 that conditionally granted a limited waiver of the EAS rules to AT&T until the end of July 2008. As part of this conditional grant, AT&T was required to inform its U-Verse subscribers of the extent to which it provided EAS messages and its schedule to become fully compliant with the Commission's EAS rules. On July 31, 2008, AT&T informed the Commission by letter that it had, pursuant to mandates imposed by the Order, completed the second and final phase of its EAS implementation in connection with its U-verse service.

PEG Access Hearing Questions for the Record – FCC
Rep. Adam Schiff

Does the FCC have authority to take action against cable providers if they are inhibiting PEG access by violating franchise rules and regulations, even if the Commission has not received a formal complaint? If not, what section of federal law precludes such independent oversight?

Does the FCC believe that a system which doesn't support closed captioning and second audio programming, services that many California educational institutions rely on, meets the requirements of the Act, and if not, what is FCC doing about it?

Does the Commission believe that putting PEG channels on one on-demand type channel, while providing regular service to commercial channels, violates the basic service tier requirement?

RESPONSE: While the Commission does have authority to act on its own motion, the Commission's common practice is to act upon complaints received. Written complaints provide the detail necessary to properly research and investigate the concerns at issue.

The Commission is concerned about potential closed captioning and service tier placement violations. With respect to the closed captioning issues, the Commission's closed captioning rules (47 CFR 79.1 et seq) require that video programming be closed captioned unless exempt under certain limiting criteria. However, a video programming distributor (e.g., cable system) is not required to ensure that programming such as commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the Communications Act is captioned. Our rules state that, in such a case, the entity that contracts for the program's distribution shall be required to comply with the closed captioning requirements. So, although the video programming distributor is not required to caption PEG channel material, the rule suggests that the PEG operator must do so. In any event, Title II of the Americans with Disabilities Act of 1990 (ADA) would likely require that information that airs on government channels be accessible in some fashion. The Department of Justice implements that provision of the ADA.

With respect to the PEG placement issues, while we have still not received a complaint, the Commission staff is anticipating receiving a referral from the United States District Court, Eastern District of Michigan related to the lawsuit brought by the City of Dearborn and others, alleging that a cable operator unlawfully attempted to convert PEG channels from analog to digital and move PEG channels into the 900-channel range. The Commission will determine next steps once it receives the referral from the court and will take appropriate action.