

**Statement
Of**

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

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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 while non-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

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 1984*, 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.