

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
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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.