



The Alliance for Community Media of New York
93 Wiccopee Road, Putnam Valley, New York 10579
www.acmny.org – 845-528-7420 – Arrien@optonline.net

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To:
The Federal Communications Commission

Re: Promoting the Availability of Diverse and Independent Sources of Video (DN 16-41)

I am writing on behalf of the Alliance for Community Media of New York. We are a 100% volunteer organization that works to promote the existence and viability of Public, Educational and Government access throughout New York State. I also work in the PEG industry as the head of the Community Media Department for the Town of Putnam Valley, New York where I manage two local access channels, a Government channel and an Educational channel. I am routinely included in cable franchise negotiations with cable companies such as Cablevision and Verizon. Some of my comments are based on first hand experience in negotiation and others from consulting with my colleagues throughout the State.

We appreciate the opportunity to provide information for the FCC's inquiry,

The FCC asks the following questions regarding Public, Educational and Government Access channels in the inquiry:

“We seek comment on MVPD's practices with respect to making PEG programming information available to subscribers. To the extent that MVPDs do not make this information available, is this for technical reasons, and if so, can the technical barriers be surmounted? Is the Congressionally-imposed prohibition against editorial control of PEG channels relevant to this issue? What is the source of the Commission's authority in this area, if any?”

As a rule PEG channels have not been given the opportunity in my Town or other municipalities in New York State to include the descriptions of our programming on the Electronic Program Guide. This makes it impossible to record our programs on a DVR. This makes the programs we create less viewable to people who can not be home to see that program when it aired in that time slot. There has been no incentive for the MVPDs to provide this EPG service, and no penalties if they do not, hence we still have no Electronic Program Guide for PEG. If there are technical barriers, they are clearly surmountable in this era of remotely updatable information via a webpage with a password. What we have here is a lack of will. The prohibition against editorial control of PEG channels is completely irrelevant to this issue, except for the fact that no intervention at all is tantamount to allowing the discriminatory practice against PEG to continue. When we complain to our State agencies about problems of PEG parity with commercial TV, they always defer to the FCC as the rulemaking body. The only source of authority in this area is the Commission, since these are telecommunications issues and the Commission is the designated authority in this area because of its expertise.

The FCC also asks a series of questions about the ability of independent channels to achieve distribution on MVPD systems and the negotiating practices of MVPDs.

For the last 8 years I have been asking our cable provider (Cablevision) for information on the timetable for the PEG channels to be transmitted in High Definition (HD). I explained that the reason I was asking was to plan replacing my equipment as it failed with HD capable equipment. In all that time nobody returned my call, even after I repeatedly left the HD question with the secretary of the government liaison for the company. Finally about a year ago, I called again and was given the answer that there are NO PLANS for the cable company to deliver the PEG channels in HD. I have been in touch informally with other PEG colleagues in the NY and NJ Cablevision area, and the estimates were a minimum of 7 years before they could even consider HD. More recently the estimates have been 10 years or "maybe never". The only couple of HD channels in my State are in Manhattan and Brooklyn. My Town of Putnam Valley is currently in franchise renewal negotiation, and when the subject of HD came up, we were basically told that there are no plans for HD at this time. This not only makes it impossible to plan for technical component upgrades, but it is just horrible to consider that we may be showing our Government and Educational content in Standard Def for 10 years or more, whilst the vast majority of the programming continues to be in HD or even greater video resolutions as 4K within the next 5 years. It creates problems in post production to 'down convert' HD into SD. The image looks worse than if it was produced in SD originally because of visual artifacting from conversion of the codec. This puts NY State residents at an increasing disadvantage to be able to see sufficient resolution on images of maps and plats in Planning and Zoning meetings, the amount and size of text in presentations on PowerPoint, the informational Bulletin Board TV Scroll, etc. It is simply backward and unfair to expect PEG channels to continue in Standard Definition (720x480 pixels) while the rest of television moves on. This was not the intent of the original Telecommunications Act, to place PEG video resolution far below that of commercial television. Only the FCC can demand that non-commercial PEG be treated equally to commercial television.

We have already replaced our Bulletin Board TV Scroll device with an HD capable Tightrope Carousel 330. Sadly, we can only cablecast in SD, so we cannot take advantage of the extra resolution in this multi-zoned digital signage device. Like most municipalities and Community Media Centers in New York State we will be replacing our (10 year) old SD playback equipment in the next few months with monies from our franchise renewal. Even though cable is not providing an HD delivery it is insane to replace this antiquated SD equipment with more SD equipment that is simply 'new'. We will be investing in a Telvue Hypercaster system which is capable of i.p. transmission in HD. We have HD cameras now, and intend to install robotics with HD cameras because if the cable industry pulls out completely, we will need to still create our programs in HD for the web or for future MVPD that take their place. For post-productions we have both the CS6 software and 64 bit editing systems that are full HD capable and the only thing holding us back is the lack of HD delivery of cable. We need the FCC to require that HD delivery be provided to PEG channels. It is unfair not to. HD has 4 times the pixel area of SD, and it is ridiculous to force PEG channels to function with antiquated low resolution delivery of Standard Def. There needs to be a 'rule' on this from the FCC.

As if the HD problem wasn't enough, I would like to call attention to the existence of unfair negotiating practices with regard to our franchise agreements.

Cablevision has, in the last 10 or so years, started requiring certain language in the franchise agreements of many municipalities that will let the company pay less franchise fees and capital monies depending on the existence of not only new cable providers, but also of NON-FRANCHISED multi-channel video providers. My town is very rural and hilly. Cablevision brought service into our area around the year 2000. Since then only Verizon Fios approached the Town for a franchise agreement. Right after our negotiations started, they abruptly ended as Verizon Fios decided to halt its expansion. Over the years, however, they have continued to wire our town for internet, but not actually offer a cable product. They are currently partnering with Satellite providers for the video distribution. We have been concerned in the Town that they will eventually offer OTT (Over The Top) video programming over the internet, and will take away many more subscribers from Cablevision, which is our only source of franchise fees or previously negotiated capital funds. Now Cablevision has put "Competitive Fairness" language in their agreements. Their clause 34.2 in our proposed renewal agreement states that:

"In the event that a non-franchised multi-channel video programmer/distributor provides service to residents of the Municipality, the Franchisee shall have a right to request Franchise Agreement amendments that relieve the Franchisee of burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise. Such petition shall: i) indicate the presence of a non-franchised competitor(s); ii) identify the basis for Franchisees belief that certain provisions of the Franchise Agreement place Franchisee at a competitive disadvantage; iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. Upon written receipt of a petition seeking such relief, the Municipality shall provide the Franchisee with an opportunity to be heard on its request for amendments to the Franchise. The Municipality shall no unreasonably withhold granting the Franchisee's petition and so amending the Franchise agreement."

This clause is entirely unfair because if a non-franchised multi-channel video distributor (such as Satellite service, which exists now, or a future OTT video provider) delivers video in our Town, those services bring no franchise fees to the Town. If they did, then I could understand this clause. However, if our Cablevision subscribers drop cable and go over to these new non-franchise multi-channel video providers, then we LOSE THOSE FRANCHISE FEES in DIRECT PROPORTION to the loss of the Gross Receipts that Cablevision would have received from those lost subscribers. To FURTHER PENALIZE THE TOWN to give back a portion of their franchise fees, readjust their gross revenue definition or reduce other capital monies previously agreed upon is UNFAIR. In New York State our municipalities are permitted up to 5% of the gross receipts. Why should loss of subscribers be blamed on the municipality who has a proportional share in those profits and no way to assess fees on the competitors? The clause above is in approximately 200 franchise agreements in the greater NY City area (including New Jersey and Connecticut). It tends to be in the agreements of the smaller municipalities (LFAs) that cannot afford to hire a telecommunications attorney for franchise negotiation. So this sleeper clause can suddenly cause a vast drop in the franchise fees to the municipality should it be invoked in the coming years. This would have a devastating effect on many municipalities.

The FCC should not allow these unfair negotiating practices to continue.

The inequity of not forcing other video providers such as Satellite and OTT internet providers to pay their share of Franchise Fees to the municipality seems to be to be at the heart of the matter. The FCC should make it fairer to the municipalities to charge for the right of way, be it cable, internet, or satellite transmission through the atmosphere so as to

contribute to the cost of continued Public, Educational and Government Access. The funding stream for PEG was originally the cable companies, but the laws have failed to keep pace with the changing technology and forms of distribution. All forms of video transmission must contribute to the cost of PEG, and the local programming from those channels should be made mandatory carriage on any new form of video distribution for the good of the people to see their hyper-local coverage. Amendments should be made to the Communications Act to reflect new and future carriers of video programming, and provide for PEG funding streams for the future. The plans of our cable company are to also offer OTT programming to their customers. That will exempt them from paying franchise fees to the municipality for those services. So we lose again, even if it's not from outside competition. The problem is that internet delivery should not be exempted from paying franchise fees. This was the intended funding stream to provide for PEG Access from the Telecommunications Act. That intent should be carried on by the FCC.

These inequities, combined with the lack of inclusion on the Electronic Program Guide, and the lack of HD for PEG channels puts PEG at a serious disadvantage in terms of our share of the television viewership. The non-commercial PEG channels should have equal protection under the law for visibility, quality of image, channel accessibility and continued share of the profits as their commercial counterparts.

We appreciate the opportunity to enter this information into the record.

Sincerely,

Maryann Arrien
Chair: Alliance for Community Media of New York
www.acmny.org
Arrien@optonline.net
845-528-7420 phone & FAX
845-216-6683 cell

Facebook: "ACM New York"
Google+: "ACM New York"

Board Member: Alliance for Community Media North East Region
www.acm-ne.org

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