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April 3, 2019

VIA FCC ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Second Further Notice of Proposed Rulemaking In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992
MB Docket No. 05-311 ("Second FNPRM"), FCC 18-131
- *Ex Parte Communication*

Dear Ms. Dortch:

This firm represents a coalition of local governments consisting of the Association of Washington Cities (AWC); the Washington State Association of Counties (WSAC); the Colorado Communications and Utility Alliance (CCUA); the Cities of Everett, Kent, Lacey, Olympia, Seattle and Tumwater, Washington; Thurston County, Washington; the Rainier Communications Commission (RCC) and the Jersey Access Group (JAG). Our clients have filed Comments and Reply Comments in the Second FNPRM.

On April 1 and 2, 2019, I, along with Alan DeLollis (CCUA President and Legislative and TV Communications Manager for Denver Marketing and Media, City and County of Denver, Colorado); Alberto Garcia (Telecommunications and Legislative Administrator, City and County of Denver, Colorado); Victor Locke (Broadcast Specialist, City of Durango, Colorado); Richard Desimone (Managing Director, JAG); and Betsy Schwartz (Social Media Consultant, JAG) attended meetings at the Commission with the following FCC representatives:

April 1, 2019

Chairman Ajit Pai
Alexander Sanjenis, Acting Media Advisor
- Chairman Ajit Pai's Staff

Kate Black, Policy Advisor, Media
- Commissioner Jessica Rosenworcel's Staff

Evan Swarztrauber, Policy Advisor
- Commissioner Brendan Carr's Staff

Michael Scurato, Acting Legal Advisor for Media and Consumer Protection
- Commissioner Geoffrey Starks' Staff

Martha Heller, Division Chief
Maria Mullarkey
Brendan Murray
Olivia Avery
- Media Bureau, Policy Division

April 2, 2019

Joel Miller, Chief of Staff and Media Legal Advisor
- Commissioner Michael O'Rielly's Staff

In these meetings, we described the multitude of public benefits that PEG programming provides for local citizens in communities of all sizes across the country. Specific information about PEG programming through the CCUA, and the cities of Durango, Denver and Seattle was provided at the meetings and copies of the information provided are attached to this letter.

We expressed concern that despite Commission rules providing for the filing of comments and reply comments, and subsequent oral advocacy to be noted in the record through these ex parte filings, the NCTA has utilized the ex parte meeting process as a mechanism to file three sets of what are effectively comments containing additional legal analysis of the issues. We would not ordinarily seek to use this process to continue written legal arguments that could have been provided during the comment and reply comment period, but feel compelled to respond to NCTA's recently filed and flawed legal analysis. As such, we identified these four main points.

A. The Legislative History of the 1984 Cable Act and the Language of the Act Itself Support Local Government Arguments that PEG Channels are Not Franchise Fees

The Cable Act defines franchise fee as "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such."¹ The provision of PEG channels to local franchise authorities in cable franchise agreements is neither a tax, fee nor an assessment.

A colloquy between Representative Wirth, and Representative Bliley is part of the congressional record in the 1984 Cable Act, and both the colloquy and paraphrase of the content can be found therein.²

Mr. BLILEY. What is the relationship between permissible franchise fees and public, educational, and governmental access commitments in new franchises?

Mr. WIRTH. Subsection 622(g)(2)(C) establishes a specific provision for PEG access in new franchises. In general, this section defines as a franchise fee *only monetary payments* made by the cable operator, and does not include as a "fee" any franchise

¹ 47 U.S.C. 542(g)(1).

² 1984 U.S.C.C.A.N. 4751, 4753; H.R. Rep. No. 98-934 at 65 (1984).

requirements for the provision of services, facilities or equipment.³
(emphasis added)

The colloquy demonstrates clear Congressional intent that non-monetary payments are not considered franchise fees.

Further the history of the 1984 Cable Act itself reflects a carefully considered balance between the needs of local franchise authorities and cable operators. The basis of the legislation was a negotiated agreement between the National League of Cities (NLC) and NCTA.⁴ These stakeholders were brought together by the congressional committee to work out compromise language for the proposed bill.⁵ The transcript of the hearing at which the head of the NLC and the head of NCTA presented this agreement demonstrates that both sides had to compromise on what they wanted in the bill.⁶

NCTA is now arguing that non-monetary franchise commitment should always have been included in the definition of franchise fees, but its members have been part of the legislative process from the start and either made no such argument, or Congress declined to adopt it. Past practice has demonstrated that in cable franchise agreements since the Cable Act was passed in 1984, commitments such as the provision of PEG channels have been treated as separate from franchise fees.

B. Cable Franchises are Voluntary Agreements Negotiated in Arms-Length Transactions

The provision of PEG channels pursuant to franchise agreements is a voluntary commitment made by cable operators as part of the negotiating process. An agreement in a franchise to provide PEG channels is one of the many items of bargained for consideration that go into a cable franchise agreement. It is not a tax, a fee, nor an assessment.

NCTA argues that sunk costs are significant and preclude cable operators from engaging in a truly voluntary process, citing the section of the Cable Act Committee Report that discussed the formal franchise renewal process as supporting this assertion: “Such a provision is necessary to protect the heavy investment made by cable operators in a cable system.”⁷ However the section

³ 1984 U.S.C.C.A.N. 4751, 4753.

⁴ Options for Cable Legislation, Subcomm. on Telecommunications, Consumer Protection, and Finance of the Comm. on Energy and Commerce (May 25, June 22, and Nov. 3, 1983) at 10; 130 Cong. Rec. S14281-97 (daily ed. Oct. 11, 1984) at S 14283: “Therefore, I asked the leadership of the cable industry and the cities to resolve their differences ... To summarize these negotiations, the National Cable Television Association [NCTA] and the National League of Cities [NLC] held a series of meetings in an effort to reach a compromise. S. 66 was amended on several occasions to reflect these compromises. Finally, in April of 1983, the president of the NLC and the president of NCTA sent a letter of endorsement for a revised version of S. 66.”

⁵ Options for Cable Legislation, Subcomm. on Telecommunications, Consumer Protection, and Finance of the Comm. on Energy and Commerce (May 25, June 22, and Nov. 3, 1983) at 10-12.

⁶ *Id.*

⁷ Letter From Rick Chessen, Chief Legal Officer, NCTA, to Marlene H. Dortch, Secretary, FCC, Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable

by section analysis of the report on the formal franchise renewal provisions while still acknowledging these sunk costs, states that:

“A cable operator and a franchising authority may negotiate renewal independent of this section. Also, independent of this section they may reach agreement on a franchise renewal at any time during the franchise, including at any time after the procedures under this section have been initiated. Indeed, the Committee expects that the vast majority of franchises will be renewed *without regard to this section*.”⁸ (emphasis added)

The ability to invoke the formal renewal process, an extremely costly process for local franchising authorities, provides precisely the tremendous leverage that cable operators have in these negotiations.

Congress understood the informal franchise process to be a voluntary process by using words like “negotiate” and “reach an agreement” to describe the undertaking. And as the report predicted, the vast majority of cable franchises are renewed under this informal process. With all due respect to NCTA, the claim that sunk costs somehow preclude cable operators’ ability to exercise leverage in arms-length negotiations during the informal renewal process demonstrates a complete lack of experience in actually negotiating these agreements, and ignores the reality of what actually happens in franchise negotiations.

In our experience negotiating hundreds of cable franchises for communities of all sizes, with cable operators of all sizes, in multiple states since 1985, cable operators exercise tremendous leverage and negotiating power. As noted above, the fact that they have the ability to seek formal negotiations, and cause the local franchise authority to incur the costs involved in that process, provides far more leverage over local franchise authorities than almost any other factor. Cable operators generally refuse to provide benefits to a local community through a franchise agreement, unless that community can demonstrate that such benefits are necessary to meet the future cable-related needs of the community – just as Congress intended in the Cable Act. And even when a locality expresses and documents its needs and makes a specific “ask” in franchise negotiations, cable operators often successfully negotiate down, and end up providing far less than what was requested – again due to their significant leverage.

Every one of the jurisdictions involved in this filing has been involved in franchise negotiations which involved (1) significant time, money, and effort, (2) comprehensive discussions of meeting cable-related community needs, and the impact of meeting those needs on the cable operator and subscribers, and (3) resulted in significant compromise based upon those arms-length negotiations. Many of the jurisdictions represented here would tell the Commission that they accepted less than what they felt was reasonably needed, in part due to the cable operator’s refusal to compromise, and the knowledge that the cable operator had the financial wherewithal to drag

Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311 at 2 (3/13/19) n. 7 quoting H.R. Rep. No. 98-934 at 27 (1984).

⁸ H.R. Rep. No. 98-934 at 72.

out the negotiations to a point where the local jurisdiction would no longer have the budgetary means to continue discussions. The claim that sunk costs compromise a cable operator's ability to engage in fair and reasonable arms-length negotiations, and that provision of PEG channels through the informal franchise renewal process are not voluntary commitments made in the broader context of these discussions is far removed from the reality of cable franchise negotiations.

Further proof of the unrealistic position taken by NCTA is the fact that franchise negotiations rarely end up in the statutory formal process. In the hundreds of renewals we have been engaged in over the years, it has never happened.

C. The Commission Must Undertake a Careful Analysis to Avoid Impermissible Retroactive Impairment of Contracts

If the Commission were to adopt the proposed rules in the Second FNPRM and apply them to existing franchise agreements, the secondary retroactivity effects of the rules will upset settled expectations and preexisting interests. NCTA has noted that under *NCTA v. FCC* the Commission must, in any order adopting such rules, explicitly "balance the harmful 'secondary retroactivity' of upsetting prior expectations or existing investments against the benefits of applying their rules to those preexisting interests."⁹

Therefore it is vital that the Commission undertake its own impact study to assess what the precise impact of applying these rules to existing franchises would be. This is not simply a conclusion to be made about the statements contained in the record of this docket. The Commission itself must undertake a study providing this kind of comprehensive analysis. Indeed, the Commission now has an Office of Economics and Analytics which has the expertise and ability to undertake this kind of study. If the value of PEG channels is to be credited against the 5% franchise fee cap, what is the value of those channels? Do they vary by market? What do cable operators charge in each market for channel bandwidth and what will they charge local franchising authorities? What is the value of standard definition channels versus high definition channels? How much franchise fee revenue is actually generated in each jurisdiction with a cable franchise, and what kind of government expenditures do franchise fee revenues pay for? How will loss of those fees, if a jurisdiction decides to keep its PEG channels, impact other government functions? Local governments with existing franchise agreements have expectations based upon those agreements and based upon 35 years of well settled, consistent interpretations of the Cable Act related to these issues. If the Commission intends to make a 180 degree change in the prior decades of Cable Act interpretation and apply that change to existing agreements, it has significant work to do first, in order to complete this kind of analysis.

It is our position that the harms will outweigh any benefits of applying the proposed rules retroactively, but until the Commission actually undertakes such a study, it cannot make any determination on the relative burdens the proposed rules will have on the parties.

⁹ *NCTA v. FCC*, 567 F.3d 659, 670 (D.C. Cir. 2009).

D. Whether PEG is a Capital or Operational Cost is Not Relevant

Arguments that the provision of PEG channels in cable franchises are operational costs, not capital, and therefore not excluded from the 5% franchise fee cap¹⁰ are misplaced. While the Cable Act states that the definition of franchise fees does not include “capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities,”¹¹ nothing in the Cable Act says that only requirements for capital costs are outside the scope of the statutory definition of franchise fees. One must look at the plain language of the primary definition – franchise fees can only be a “tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.”¹² As discussed above, Congress intended the definition of franchise fee to be limited to monetary payments, precluding this kind of offset for provision of PEG channels. And as also noted above, even if PEG channels could be considered some kind of a fee or assessment, in the context of franchise negotiations, they are voluntary commitments and not impositions.

The FCC's proposed new cable rules would turn 35 years of interpretation of the 1984 Cable Act on its head, crippling access channels and franchise fee revenues to local franchising authorities nationwide. The proposed rules in the Second FNPRM are a stark departure from the settled understanding as reflected in the practices of cable franchises negotiated between cable operators and local franchising authorities. The proposed rules are not supported by the law, legislative history, or sound policy, and are certainly not in the public interest.

Pursuant to Rule 1.1206 of the Commission's Rules, an electronic copy of this letter and the attached summary documents are being filed via the Electronic Comment Filing System (ECFS) in this matter.

Please feel free to contact me with any additional questions or concerns you may have.

Very truly yours,
KISSINGER & FELLMAN, P.C.



Kenneth S. Fellman
kfellman@kandf.com

KSF/eaj
Enclosure

¹⁰ See Letter From Rick Chessen, Chief Legal Officer, NCTA, to Marlene H. Dortch, Secretary, FCC, Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, MB Docket No. 05-311 at 2 (3/11/19).

¹¹ 47 U.S.C. 542(g)(2)(C).

¹² 47 U.S.C. 542(g)(1).

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April 1, 2019

Ajit Pai, Chairman
Michael O'Rielly, Commissioner
Brendan Carr, Commissioner
Jessica Rosenworcel, Commissioner
Geoffrey Starks, Commissioner
Michelle M. Carey, Chief of the Media Bureau
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

Dear Chairman Pai, FCC Commissioners and Ms. Carey,

Thank you for the opportunity to provide comments related to the Federal Communications Commission's Further Notice of Proposed Rulemaking concerning cable franchise fees. The proposal is troubling as it would allow cable companies to value public benefits and deduct them from cable franchise fees, potentially slashing millions in franchise fees paid to local governments to operate the nation's cable-access channels or public, education and government (PEG) stations.

Amid today's charged media landscape and tense political climate, local cable-access stations are a vital part of the country's public media. PEG channels connect residents and viewers to their communities and provide transparent, unbiased coverage of local government.

Seattle Channel, the city's municipal TV station, is funded almost exclusively by cable franchise fees. The FCC's franchise fee proposal could drastically constrain PEG channel budgets, limiting media diversity.

Government-access television is important to the health of our democracy. It informs the public, connects the civic environment, and plays a critical role as an equalizer in an increasingly stratified society. To borrow a term from Connecticut's Simsbury Community Television, Seattle Channel is the city's "electronic public green space." It provides viewers with an oasis free from any commercial agenda or interests.

Most of the decisions that truly affect daily life are made at the local level. Government-access television promotes civic engagement and conversations that are key to building community.

"The 'overhead of life' has gotten bigger and heavier. Seattle Channel can provide scale to issues that seem overwhelming or feel impossible to tackle," said a community leader in a recent Seattle Channel stakeholder interview.

Seattle Channel provides gavel-to-gavel coverage of approximately 350 Seattle City Council meetings annually. The station's Emmy-Award winning programming includes a weekly public-affairs show; in-depth arts coverage; a news/lifestyle magazine show; and panel discussions

and interviews with local leaders, national figures and best-selling authors. An award-winning documentary series shines a spotlight on communities with a focus on diversity and inclusion.

More than 145,000 cable subscribers have access to Seattle Channel which broadcasts on cable channel 21. Seattle's PEG channels were negotiated with our cable operators during franchise negotiations that followed the Cable Act's informal process, with give and take on both sides, resulting in a voluntary provision of the PEG benefits we can now provide to Seattle residents.

Seattle Channel partners with arts, community and civic organizations to provide a nonpartisan forum for ideas, debates and discussions and to shine a spotlight on the city's evolving culture and its history.

Here are some comments from our partners and viewers highlighting the value of Seattle Channel.

"Seattle Channel has been a critically essential partner in our efforts to inform and inspire civic engagement in our community and beyond. Without the ability to broadcast discussions of the most important issues facing our city, state and nation, we would significantly diminish our efforts to reach broad numbers of local residents – especially communities of color, low-income residents, homebound seniors, people with disabilities, and others whose engagement in public affairs is so important. Seattle Channel helps us give voice to those who historically have been disenfranchised, while also providing unique opportunities to bring public affairs issues directly to voters. We value our longstanding relationship with Seattle Channel and are deeply grateful for their partnership." – **Teresa Moore, executive director, Seattle CityClub**

"Seattle Channel has emerged as a major contributor to the local public dialogue as it informs citizens of Seattle about their community and its rich history. At a time when too many people know little about civics and the mechanics of their own government, Seattle Channel fills a critical void." – **Joni Balter, multi-media journalist and former Seattle Times editorial board member and reporter**

"For five years Seattle Channel has seen the value of documenting the African American African Gathering/State of Africatown. The Central District was once a community in which African Americans reigned and made it a truly diverse and friendly place to raise children and be a community no matter what your race or culture. Then Weed and Seed along with drugs and gangs was brought to our neighborhoods, and the rest is history. This event is a leg up for bringing the good news to Seattle that African Americans can come up with good solutions for what is wrong in Seattle for many people, not just African Americans. And it is also a good way to document something good going on for African Americans and that should make all residents feel better about our City." – **former Washington State Rep. Dawn Mason**

"I am turning 65 next month and know that I better become more informed and proactive to enjoy all of the years ahead. I hope that you will present programs in the future covering this subject of Aging Friendly Seattle!!! It is a great resource!" – **Sue, viewer**

*"On a link with info about the new city dump and noticed a video on the page. I really enjoyed it! It was informative yet fun, and the interviews were great. Also loved seeing the history of waste in Seattle and the source material you found was perfect. I then went to your YouTube channel and tripped out on all the great films and videos you've made - great subjects too, all around. I'm an instant fan 8) keep up the great work!" – **Todd Grant, viewer***

Also, please find attached letters of support from Seattle Channel partners the Nisei Veterans Committee and the NVC Foundation and the Wing Luke Museum of the Asian Pacific American Experience.

We appreciate your consideration of this information and hope that the FCC will not change the interpretation of the Cable Act that has been followed since its inception.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Gee', with a stylized, flowing script.

Shannon Gee
General Manager
Seattle Channel



March 20, 2019

Seattle Channel, City of Seattle
600 4th Avenue FL L1
PO Box 94727
Seattle, WA 98124-4727

Dear Seattle Channel:

We are writing in gratitude for our partnership over the last several years and for your ongoing work overall. Through our partnership, we have been able to shine a light on significant community stories that would have otherwise been overlooked. Your work overall has resulted in expanding access to valuable educational content and community perspectives and experiences, and we appreciate all of your efforts to public service in this light.

The excellence you bring to your work has been demonstrated in our most recent collaborations. Both “An American Hero: Shiro Kashino” and “An American Hero: Frank Nishimura” explored the contributions, service and legacy of two World War II military veterans through engaging, creative media. Both pieces received a Northwest Regional Emmy, they have been shown here at our museum to the general public as well as at teacher trainings, and they have screened at several film festivals along the West Coast. Without the Seattle Channel, we would not be able to have this educational reach and impact.

The Wing Luke Museum of the Asian Pacific American Experience is the only pan-Asian Pacific American museum in the nation, an affiliate of the Smithsonian Institution and an Affiliated Area of the National Park Service. We value our partnership with the Seattle Channel to help us fulfill our mission to connect everyone with Asian Pacific American history, cultures and art and tell the stories of all Americans.

As an organization that has existed for over 50 years in Seattle’s Chinatown-International District, a low-income, ethnic specific, historic neighborhood, we also are grateful for your work overall to share about the rich heritage of our area. Your content also has been a valuable resource for community members like us to learn about local government, its policies and impacts. Thank you for your continued dedication to serving the public in these ways that might otherwise go unfulfilled.

Sincerely,

Cassie Chinn
Deputy Executive Director



NVC FOUNDATION

1212 SOUTH KING STREET • SEATTLE, WASHINGTON 98144

206-322-1122

www.nvcfoundation.org

March 20, 2019

Dear Shannon,

This is a long overdue thank you for all you have done to promote and tell the story of the Nisei Veterans and their World War II experience. Seattle Channel has done five wonderful stories on different aspects of our organizations, the Nisei Veterans Committee and the NVC Foundation.

The five projects include:

City Stream Splashback: Nisei Veterans Hall Dances

City Stream: Voices of Nisei Veterans Exhibit

Community Stories: An American Hero: Shiro Kashino

Community Stories: An American Hero: Frank Nishimura

City Stream: Photographer Shane Sato's Nisei Veterans Project

All the stories were well researched and very engaging to the viewer. The two Community Stories earned Regional Emmy's bringing further attention to the Pacific Northwest veterans who served in the all Japanese American 442 RCT.

Our mission is to Honor the Past and Educate the Future. We are pleased to have established a relationship with you and Seattle Channel and appreciate your efforts to help us live our mission. We look forward to continuing our collaborations in the future.

Best regards,


Debbie Kashino

NVC Foundation Education Chair



P.O. Box 6094
Denver, Colorado 80206
ColoradoCUA.org

Federal Communications Commission
Washington, D.C.

April 1, 2019

The Colorado Communications and Utility Alliance is the state's leading local government professional organization providing topical information and support on Telecommunications, Broadband, Cable Franchising, Wireless, Utilities and related technology issues that impact the interests of residents and local governance.

- ❖ We support our members on local, state, and federal communication laws, administrative rulings, and judicial decisions affecting, among other topics
 - communications and internet policy;
 - broadband, wireless infrastructure and Rights-of-Way/zoning implementation;
 - new technological advancements;
 - best practices in the administration of cable TV franchises, including the operation of Public, Education, and Government (PEG) access channels.
- ❖ We actively follow emerging issues and provide analysis and advocacy services to cities, towns, counties and commissions across the state.
- ❖ We are a collective of creative programmers, producing unique content that opens governance, enhances education, and allows Colorado voices to be heard.
- ❖ And, we provide a forum for an open discussion about telecommunications and utility issues with our partners in the industry who serve our communities.

CCUA is comprised of about 60 jurisdictions across the state of Colorado and includes cities, towns, counties, school districts, councils of governments and state government departments.

Thirty percent of CCUA membership operates a government access channel that creates a place of immeasurable value for open governance. And, they also provide essential news coverage of their communities in a nation where there is a dramatic, and growing dearth of local news stories.

The need for local news is highlighted by the fact that the social media giant Facebook recently stated that its own attempt at providing local news to its users is being hindered by the lack of local news outlets. It has found that 40 percent of Americans live in place where there isn't adequate local news creating "news deserts" – places that have a real lack of original local content available.

Our Founders rightly recognized that for our democracy work, an informed electorate was of critical importance. Today, open governance is an essential element in the flow of information. Nationally, cable companies are required to carry C-SPAN, and they pay that network for their coverage of our lawmakers at work.



P.O. Box 6094
Denver, Colorado 80206
ColoradoCUA.org

Local channels provide the same type of coverage for local proceedings that affect residents' lives even more directly and covering a broader spectrum of government activities. There is no federal requirement to do so and there is no federal requirement for addressing the expense of doing so. However, when a community decides it is an important activity that will provide value for its residents, it has the opportunity to do so because Congress decided in the Cable Act that there should be channel capacity available for this use.

These terms are executed in contracts that have been negotiated in arms-length transactions and agreed to by both sides. Part of what the CCUA does is to establish model agreements that jurisdictions and the industry both participate in creating. These models significantly reduce the time and expense of the franchise process but don't lock either the industry or communities into specific positions on any issue - they allow each side to freely negotiate their own specific terms within the framework model.

In Colorado, we abide by the terms we agree to and do not seek expansive or frivolous uses of our franchise agreements. No Colorado community has been cited as a bad actor in this Docket, nor are individual companies able to cite reckless disregard of franchise terms in Colorado. The proposed rules would undermine our record of positive relations, and one-sidedly rewrite existing contracts to the sole detriment of local communities. Moreover, they would make a 180 degree change in the way the Cable Act has been interpreted by local governments, the cable industry itself, and the FCC for the past 35 years.

The Colorado Communications and Utility Alliance stands with our members and the long-standing partnerships we have developed with our franchisees. We believe these channels of open governance, educational enhancement, and unique programming strengthen our communities and state, and should remain a vital part of the media landscape as provided.

A handwritten signature in black ink, reading 'Alan DeLollis', is positioned above the printed name.

Alan DeLollis

President
Colorado Communications and Utility Alliance



I. Overview

- Denver's PEG channels provide a window into the local government process, so that residents can see how their City works, how their tax dollars are spent, and know that there is full transparency in the administrative and legislative process
- Denver is proud of its commitments to community media access and administers funding for Public, Education and Government access (PEG) through internal management of Denver 8 TV and collaborates with community organizations such as the University of Colorado-Denver, Metro State University, Community College of Denver, Denver Public Schools, Emily Griffith Technical College, and other community organizations.
- Because of the population nature of Colorado, a dense metropolitan area in Denver and very rural and mountainous areas over the rest of the state, the programming created by the Denver PEG channels is also shared with other cities in the state. The programming produced benefits other Colorado citizens who would otherwise have no opportunity to receive the information because their communities' sizes.
- Denver has worked diligently to become more creative in utilizing the monies generated through the franchise agreements to ensure that the channels and services are sustainable in light of diminishing Franchise Fees and PEG funds. Denver has always adhered to the intent of the Cable Act and the franchise agreement, and has utilized the most cost-efficient means of providing services.
- Denver is investing on behalf of our residents in a new Community Media Center which will be a shared facility that operates to empower individuals and nonprofit organizations to create video and media projects that speak to the local community, facilitate community partnerships, and diversify the media landscape.
- The proposed rulemaking would result in a significant shift in policy that would negatively affect Denver and all Colorado residents and could force a dramatic or even complete elimination of PEG programming. Below are some examples of valuable resources that could be jeopardized.

II. Government programming

- The City operates Denver 8 TV, whose equipment is funded in large part by these PEG fees. Denver 8 TV gives residents the opportunity to become more invested in the City and obtain information about their communities they likely would not find elsewhere.
- Among the unique offerings provided by Denver 8 are:
 - **Civic engagement:**
 - Non-partisan voter information programming is oftentimes the only opportunity that many of the candidates in lower-profile races have to connect with voters. In addition, Denver 8 broadcasts committee hearings and city council meetings, many of these hearings are frequently held during the work day. For working men and women who cannot take time away from their jobs to attend a committee hearing, Denver 8 gives them the opportunity to stay informed on issues affecting their neighborhoods and city.
 - Programming examples: [Denver Decides Live Forum 09.20.2018](#); [2018 State of the City](#)
 - **Documentaries:**
 - Denver 8 creates and airs documentary programming highlighting the City's history and contributors to its mosaic. This programming continues to remain a source of



pride for those community members.

- Programming example: [Globeville, Elyria Swansea Legacy Project](#)
- **Community-based programming:**
- Community-oriented shows such promote neighborhood events while also giving viewers valuable information about city resources that residents may not yet be familiar with.
- Programming example: [Your City Now 05.11.18; Art Scene](#)
- **Music programs:**
- Music-oriented programming highlights Denver's thriving music scene and provides musicians an opportunity to gain exposure they otherwise may not have obtained, while also providing an economic benefit to the city by bolstering its growing music industry.
- Programming example: [Red Rocks Premieres featuring Kaleo; Live@Levitt](#)
- **Original programs:**
- Denver 8's original programming provides an in-depth look into city departments, building trust and engagement with residents.
- Programming example: [Rolling Hot Episode 1](#)

III. Educational programming

- The City has contracted with numerous educational institutions to administer the education portion of PEG funding.
 - Denver Public Schools offers bilingual programming that allows parents to remain more involved in their children's education by helping them overcome language barriers.
 - Denver Public Schools also produces peer-to-peer programs that gives students much needed assistance with daily educational assignments. There is nowhere else on the cable programming lineup where students can avail themselves of this type of educational assistance.
 - Emily Griffin Technical College provides work force training adult-aged students, giving them hands-on opportunities to learn and gain experience with equipment purchased through PEG funds. Numerous students have been able to use this workforce development program to obtain positions in the media industry.

IV. Public Access programming

- Public access stations allow community members who would have no other means of getting their voices heard, the opportunity and tools to broadcast those opinions. Whether its through content related to faith, culture, public policy, humor, or a variety of other topics, public access stations allow Denver residents to have input in their city.
 - The new Media Center is an example of working to overcome declining financial contributions from franchise fees and PEG funds to ensure a sustainable future for public access, a valuable service not just for Denver residents, but its many Colorado contributors.

FCC Presentation, April 2019

Victor Locke, City of Durango Broadcast Specialist

Thank you for the opportunity to be here to tell you the story about Durango Government Television, or DGOV, and why it's important to our community.

Durango is a rural town in Southwest Colorado of 18-thousand residents, in a county of 55-thousand and a regional area of 250-thousand. We are three hours from the nearest interstate, surrounded by mountains and 1.5-million acres of National Forest.

Durango is in the Albuquerque DMA, which means we get little coverage of Colorado news, weather and events via commercial television. We are what is commonly referred to as "an orphan community" when it comes to television.

At DGOV, we work hard to distribute local information via our PEG channel which airs on Charter Cable within Durango, is streamed live on the City of Durango's website, as well as over the air via LPTV in Durango and Cortez Colorado, to our west. We're proud to be one of the first HD Government channels in the country, and one of perhaps only a handful who have also found a need to expand our signal over the air. The largely rural nature of our area means few residents beyond our city limits have cable TV available.

We have the means to spread news of importance to our area faster than commercial television stations from Albuquerque or Denver through our TV channel, streaming and through social media.

Granted, we air city council meetings and political forums, but we also disseminate community event information as well as high quality HD programming we produce or secure from various sources.

We also provide timely emergency information.

Let me give you two examples:

In August 2015, 3-million gallons of mining sludge flowed into the Animas River after a mining portal holding back the mix was breached.

Within hours, the river, which runs through the heart of Durango, turned bright orange.

It was up to our PEG Government Channel, which has been on the air for more than 30 years, to keep residents apprised of the incident, the potential health threats it posed and efforts to control the spill.

We were also called upon by local emergency management officials to use our PEG purchased drone to obtain video of the advancing plume, its impact on area irrigation ditches and farming areas, and more.

More recently, last June 1st the 416 Wildfire broke out 9 miles north of Durango, burning for almost 5 months across 55-60 thousand acres.

For almost 10-weeks, DGOV provided continuous information to our viewers on the fire, evacuations, road closures, fire and resulting debris flow damage, and the status of the San Juan National Forest areas not affected by the fire plus more.

Let me share some statistics:

We created and aired more than 127 presentations consisting of 8-20 slides providing graphic information provided by the fire management team and other community resources.

We aired 34 daily video updates from the Incident Command Team during the early and most aggressive stages of the fire, and even helped produce some of these reports after embedding staff at the incident command post.

We worked with the Forest Service in preparing and airing videos on fire mitigation, safety and the closure of the San Juan National Forest.

We prepared and aired 120 tv screen information crawls throughout June and July, advising on evacuations, pre-evacuations, evacuation centers, post fire burn scar flooding and other useful and timely information.

We produced 47 graphic information video's that were distributed over digital displays in place at the community recreation center and other city facilities.

We saw an uptick in calls to us from residents wanting to know how to view the channel. And we also saw a spike in viewership via our streaming analytics.

Forest Service officials at the incident command post told us they were receiving numerous comments about people seeing information on DGOV.

We did all this with a staff of three, and our station and equipment, purchased with PEG funds and upgraded over the stations 30-year lifetime.

We partnered with local emergency planning officials, the county, Fire Incident Commanders, the health department and countless others, in getting vital information to the public.

We did it at a cost to the city which probably exceeds the combined Franchise Fees and PEG fees we receive. Our local franchisee provides the channel and collects the fees, but no other emergency information was provided via Charter during these events.

Instead of trying to reduce or eliminate franchise and PEG fees, cable firms should be championing their role in helping these channels bring important daily and emergency information to viewers.

If those fees go away, it's likely our PEG channel will go away, due to funding pressures.

I'm a broadcaster of 48 years, 29 of that in television news.

I remember the days when broadcasters were obligated to provide emergency and pertinent information, to serve their communities in return for the use of the television spectrum.

Like over-the-air broadcasters, shouldn't cable firms have a similar obligation to local communities in return for their use of public rights of way and facilities?

It's unlikely we are a competitive threat to cable's entertainment and information offerings.

We provide them something they can't and aren't providing: local, timely, accurate community and emergency information.

Thank you!

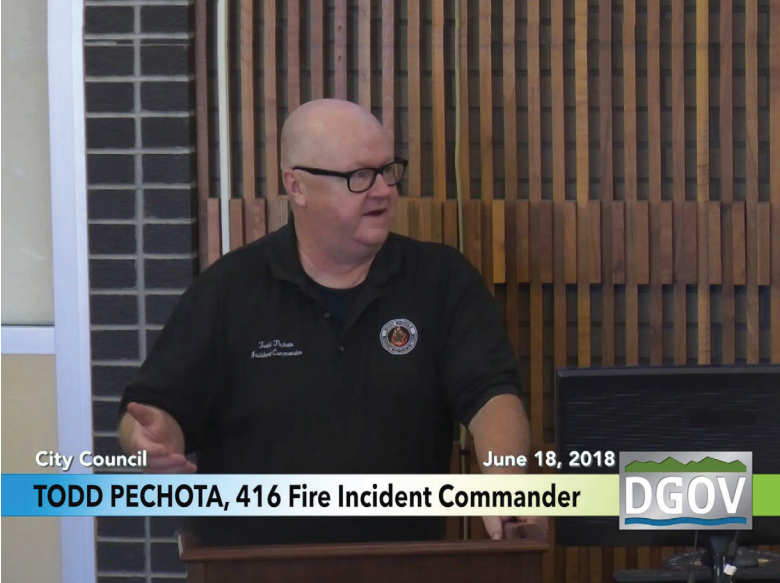


EMERGENCY ALERT

416 Fire Information: Important

6:30 pm Jun 3
U.S. Highway 550
is closed once again,
all evacuation and
pre-evacuation
orders from Friday
remain in effect.

Map labels: Purgatory Resort, Pre-evacuation Area, Mandatory Evacuation Area, Current Fire Activity, Electra Lake, Hwy. 550 Closure Point at Electra Lake, San Juan National Forest, Hwy. 550 Closure Point at CR 250, Hermosa.



ANIMAS RIVER CLOSED!

Durango drinking water is safe to use,
but you are asked to continue
conserving water until Animas River
water is available once again. Your
efforts are working and are appreciated!

ANIMAS RIVER CLOSED!

By Order of the La Plata County Sheriff, pursuant to
C.R.S. 33-13-111 & 112

Due to Gold King Mine Spill, the Animas River is
closed to recreational use until further notice.
EFFECTIVE THURSDAY, AUGUST 6, 2015 at 3:00PM
UNTIL FURTHER NOTICE.