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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rules, Sections 63.54-63.58	)	CC Docket No. 87-266
and	)	
Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service	)	Rulemaking No. 8491

To: The Commission

COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA AND THE OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST (COLLECTIVELY, THE "PEG ACCESS COALITION")

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COMMENTS

To: The Commission

The Alliance for Community Media and the Office of Communications of the United Church of Christ (collectively, the "PEG Access Coalition" or "Coalition") hereby file the following comments in response to the Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in the above-captioned proceeding, released November 7, 1994.

I. INTRODUCTION

The Commission issued the Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking ("Third Notice"), supra, on November 7, 1994 to engage in additional rulemaking and to seek additional information. Information and comment have been sought in four areas: detailed data on the technical and economic constraints on the provision and expansion of analog channel capacity; suggestions for

criteria by which regulation of cross-ownership, competition, and telephone company-cable company partnerships and joint ventures may be evaluated; information and comment on whether telephone local exchange carriers ("LECs") should be allowed or required to provide preferential access or discounted rates to commercial broadcasters and/or certain types of not-for-profit programmers; and comments regarding additional rules with respect to pole attachments and conduit rights.

The PEG Access Coalition has serious concerns regarding all the issues raised in the Third Notice. The Coalition is particularly concerned about a still-undefined area of regulation that has seemingly opened in the wake of the decisions of five federal district courts and one Circuit court invalidating both the FCC's cross-ownership rules and the underlying law, 47 U.S.C. Section 533(b), on constitutional grounds. The Coalition, however, will focus primarily on preferential access, reflecting their members' experience and particular interest in this proceeding.

II. COMPENSATORY OR PREFERENTIAL ACCESS TO VIDEO DIAL-TONE IS NECESSARY TO THE SURVIVAL OF PEG ACCESS, WHETHER ON VDT OR CABLE.

A. Without Regulatory Protection, Competitive Market Forces Will Force PEG Access Out of Existence.

The disparate treatment of cable under Title VI and Video Dialtone ("VDT") under Title II of the Communications Act could

have serious consequences for PEG access, for those who use PEG access to communicate with their communities, and for the franchising authorities that regulate cable operators in an era of rapidly increasing technological and legal convergence. Legal barriers have fallen between VDT and cable, and it seems possible that both industries may attempt to claim that they are properly regulated, not under Title VI but under Title II. The "common carrier" provisions of Title II, however, do not mandate or authorize PEG access, and alternative access to VDT space at commercial or "leased access" rates would not be a viable option for the vast majority of PEG users.[1]

More importantly, nascent competition between cable operators and VDT providers may put economic pressure on cable operators to terminate PEG access in order to lower costs in those regions in which two or more systems compete directly. Under these conditions, a regulatory scheme that discriminates between different providers of identical services in the same region will give the service that is subject to less regulation an economic advantage over the more-regulated.

Providers of VDT are not subject to the local franchising requirements and such responsibilities as franchising authorities may place upon the VDT provider[2]. VDT providers' competitive advantage may cause viewers to migrate away from cable systems to

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[1]See Affidavits of PEG Access Managers in Support of Comment (30) attached as Appendix A, infra.

[2]National Cable Television Association v. FCC, 33 F.3d 66 (D.C. Cir. 1994).

VDT, depressing franchise receipts and putting economic pressure on cable operators to cease offering PEG access when franchises come up for renewal.

Bell Atlantic President James Cullen and Chairman Raymond W. Smith recently predicted that their company would take fifty percent of the mid-Atlantic region's cable television market away from local cable operators within the next five years.[3] Advanced switching systems, the ability to offer significantly more programming, and a greater amount of interactive programming over increasingly technologically sophisticated hardware, will make the current generation of one-way point-multipoint multichannel distribution systems via coaxial cable seem profoundly antiquated.

Consequently, PEG-free VDT could conceivably replace cable as the primary means of interactive communication by wire in the United States. And without PEG access, current PEG users would be forced into the commercial marketplace to produce programming, or be driven out of the marketplace altogether; most PEG access centers would cease to exist.

Appended to this Comment are thirty affidavits from managers and executive directors of PEG Access centers throughout the country. Most of the affiants have provided comprehensive lists of those groups and organizations that utilize PEG. These groups include religious, non-profit, charitable, governmental and

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[3]Washington Post, Oct. 11, 1994, D1.

community organizations. The affidavits[4] demonstrate the extent to which community organizations rely on the mostly-free services of PEG access to speak in the "electronic town hall." According to the Alliance for Community Media's Community Media Resource Directory[5], more than 65 percent of access centers have yearly budgets of less than $250,000; the majority of these centers rely primarily on volunteer help for their survival.[6]

Access centers generally pay nothing for transmission costs, pursuant to the franchise agreement between the cable operator and the locality in which the operator is based. PEG access center budgets generally are allocated to personnel, equipment, and facilities maintenance. Financial support for PEG access is generally provided by the cable operator, although in certain cases franchise fees are collected to support PEG access; rarely do outside contributions comprise more than ten percent of a station's annual revenue.[7]

If cable operators cease providing PEG access (either for economic reasons or because they are no longer subject to local franchise regulation), then PEG users will be forced into the commercial marketplace to reach their communities. At anywhere from $1000-5000 for an hour of leased access in most communities,

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[4]See Appendix A.

[5]Alliance for Community Media, Community Media Resource Directory 1994, Alliance for Community Media, Appendices G, H, I (1994)

[6]Id.

[7]See Affidavits attached as Exhibit A.

(with some leased access as high as $19,000 for a half-hour)[8], most religious, community and non-profit organizations, even if they had the ability to produce their own programming, would not be able to afford the price of access at "leased access" or commercial rates.[9] This disequilibrium significantly skews the ability of average persons, community groups, schools, churches, and charitable organizations to gain access to the information highway.[10] There is simply no possibility that grants or subsidies from public or private sources could provide in the private sector the same level of access that is currently provided via PEG access. A federal, state or local program to subsidize non-profit use of leased-access would incur enormous costs to keep the equivalent of one PEG center on the air for one year.[11]

The Coalition supports the concept of providing low-cost/no-cost access (and facilities, equipment and services to support it) to state and local governments and 501(c)(3) organizations, in much the same way that PEG access is currently being provided subject to local franchise agreements and pursuant to Section 611

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[8] Id.

[9] Id.

[10] See Exhibit A for lists of PEG users in communities whose PEG center directors and staff have submitted affidavits in this proceeding.

[11] See attached affidavits. As mentioned, commercial prices for an hour of leased access generally range from as little as $1000 to as much as $38,000.

of the 1984 Cable Act.[12] As indicated in the attached affidavits, state and local government currently use such channels to broadcast important community service, safety, educational and public health information. PEG access allows community groups to communicate with their members and with each other. Charitable organizations in particular are able to reach out to the community at a time when their services are being increasingly relied on to provide support in areas of need which government programs no longer reach.[13]

B. Public, Educational, and Governmental ("PEG") Compensatory Access is in the Public Interest.

1. First Amendment Values Support Widespread PEG Access.

The First Amendment is designed to foster "the widest possible dissemination of information from diverse and antagonistic sources," Associated Press v. United States, 326 U.S. 1, 20 (1945). Indeed, the United States Supreme Court stated pointedly that "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market," Red Lion Broadcasting v. FCC, 395 U.S. 367, 390 (1969).

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[12] 47 U.S.C. 531(a).

[13] See in general Affidavits attached as appendix A.

Currently, cable programming in general is dominated by national programming supplied by 122 programming distributors, including seventeen distributors devoted to exclusively religious or non-profit programming.[14] Of the remaining 105 suppliers, twenty-two companies own fifty percent of them.[15] The companies that own these entities are often multimedia conglomerates who own not only satellite programming distribution companies, but newspapers, broadcast television stations, microwave transmission stations, television and movie studios, record labels, publishing houses, as well as cable systems.[16] Viacom, Inc. owns eight alone, and Turner Broadcasting Systems, Inc. owns seven.[17]

The shape of the telecommunications market clearly indicates an increasing pattern of horizontal and vertical integration in production, distribution, and systems operation in the television-by-wire industry and across the communications industry as a whole. Indeed, the Coalition expects that a possible effect of the likely demise of the cross-ownership ban may be the purchase of independent cable companies and some multiple systems operators ("MSOs") by Regional Bell Operating Companies ("RBOCs").

As a practical matter, then, cable subscribers receive

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[14] 62 Television and Cable Factbook, TV & Cable Services Volume, Section G, 70-87 (1994).

[15] Id.

[16] Id.

[17] Id.

virtually identical programming choices from satellite-based networks such as QVC, Home Shopping Network, the various Turner networks (Turner Movie Classics, TNT, CNN, Headline News), ESPN, Nickelodeon, et al.[18] The majority of satellite-based programming, while offering some superficial diversity in terms of subject matter, is primarily for-profit and entertainment oriented, and lacks both the multiplicity of voices and attention to local affairs that is characteristic of PEG use.

The domination of video programming, whether cable or VDT, by such entities deleteriously impacts on the original goals of the National Information Infrastructure to promote diversity, the free flow of information, and a commitment that people at all levels of the population have access to a minimum level of services, if necessary through a public interest tithe.[19] As the Supreme Court recently said in Turner v. FCC, "The First Amendment's command that government not impede freedom of speech does not disable the government from taking steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas," Turner Broadcasting System, Inc. v. FCC, 114 S.Ct. 2445, 2467 (1994); *See also* Associated Press v. United States, 326 U.S. at 20. The Coalition is concerned that the focus of

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[18]See in general 62 Television & Cable Factbook, Cable Systems Volume (1994).

[19]See in general "Remarks by Vice President Al Gore at the National Press Club, December 21, 1993," White House, Office of the Vice President, at 9.

debate about the future of the information superhighway has as its paradigm a system in which the ability to create and exhibit point-multipoint video programming via broadcast, cable or telephone lines may ultimately be held almost exclusively by a handful of large entertainment production companies located in New York or Hollywood. In short, the Coalition fears that the sign at the entrance to the Information Superhighway will read, "Commercial Vehicles Only."

In the Information Age, the provision of information needs to be through a dialogue among "endpoints," not just a mechanical form of transmission between a few concentrated information providers and multiple, passive information receivers. As society becomes more technologically sophisticated, discussion about matters of important social concerns takes place, not on street corners, bars, and barbershops, as they did at the turn of the last century, but via talk-radio, on the Internet, and community access centers modelled after PEG access centers. Communication via these media occurs within and between communities without regard to race, age, gender, religion, or financial means. On PEG access channels, the opinionmakers are our friends, our neighbors, and even ourselves.

2. "PEG" Access makes all Americans into "Information 'Haves.'"

Without government intervention, the benefits of the

"information revolution" will be denied to a large segment of society because electronic media will be controlled by those who would exploit the commercial potential of telecommunications without regard to the National Information Infrastructure's potential to contribute to the quality of discourse and debate in our democratic society. As the U.S. Department of Commerce's parallel Notice of Inquiry and Request for Comments notes, failure to make information resources available to all at affordable rates will result in "a division of our people among telecommunications 'haves' and 'have-nots.'"[20]

In addition to addressing First Amendment interests, PEG access also promotes the educational, job creation, and self-reliance goals that are the mainstay of America's domestic social policy. Universities and high schools currently utilize PEG access in conjunction with their extension and distance-learning programs, and thereby help local residents gain and improve vital employment skills. Moreover, by augmenting participation in local affairs, PEG access promotes and encourages local communities to find local, often private solutions to local problems. By serving as a public forum for the discussion of local issues, local governments can enhance their efficiency and lower their costs.

The U.S. Senate Committee on Commerce, Science and Transportation, in its consideration of telecommunications reform

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[20]NTIA, Inquiry on Universal Service and Open Access Issues, Sept. 19, 1994 at Par. 7, 59 Fed. Reg. 48112, 48113 (Sept. 19, 1994).

legislation last year, recognized the importance of PEG access and its contribution to cities and states, when it noted:

> Existing telecommunication technologies have already permitted the development of diverse community-based programming that has increased civic discourse and expanded access and services to informational, cultural, educational, and health-related services. For instance, community use of public, educational, and governmental (PEG) access channels on cable systems has become a vital means of maintaining an informed and involved citizenry. Community use of PEG access channels has increased dramatically over the past 20 years. Over 20,000 hours of new programs are now produced each week, totaling over 1 million hours of new programs per year. This is greater than ABC, CBS, NBC and PBS combined.[21]

Many school, library and independent community access centers already are acting as models for the country in providing electronic "nodes," where an individual can go to connect himself or herself to a seemingly limitless selection of electronic services that he or she would be unable to afford by oneself. Many of these centers also provide special communications services for those with disabilities, and allow their participation as well in the communications revolution. At these community communications centers, the future is already here.

The National Telecommunications and Information Administration of the Department of Commerce ("NTIA"), in its current rulemaking, stated that one of the goals of the creation of the National Information Infrastructure was to create an "electronic commons" which would allow all individuals and entities, regardless of background, to express their thoughts and

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[21] U.S. Senate Commerce, Science and Transportation Committee Report on S. 1822, Sen.Rpt. 103-367, 15 (September 14, 1994).

ideas via new means of communication.[22] The NTIA's vision already exists on PEG access channels. PEG channels, funded by cable companies or franchising authorities and administered by local governmental entities (such as schools, libraries and health care facilities) or community non-profit organizations, are exactly what has been envisioned by promoters of the NII and provide a model that can be effectively adapted to newer advanced telecommunications systems. However, it will take federal, state and local laws and regulations to allow the "electronic commons" that already exists to survive and flourish.

C. Compensatory/Preferential Access is Permissible Under Law.

1. Access Should be Considered Fair Compensation for Use of Public Rights-of-Way.

The terminology used in discussing issues of public, educational, and governmental access to programming distribution will skew both the debate and its outcome. The Coalition is seeking a regulatory structure which will allow states and localities to ask for and receive reasonable monetary and in-kind compensation for use of their rights-of-way. The Coalition believes that the reservation of some VDT channel capacity for the benefit of the general public (and sufficient facilities,

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[22]NTIA Inquiry on Universal Service and Open Access Issues, Sept. 19, 1994 at Par. 60, 59 Fed.Reg. at 48120.

equipment and services to allow the use of such capacity) is an appropriate way for LECs offering video services to compensate states and localities for these rights-of-way (pursuant to state law). Consequently, at least with regard to PEG users of video dial-tone channel capacity, the Coalition believes that the appropriate term, used here and throughout, should be "compensatory access."

2. Compensatory Access is Permissible Under Law.

The Federal Communications Commission and the states have concurrent jurisdiction over the regulation of common carriers.[23] States clearly have the power to impose taxes or fees on telecommunications entities where their own law so provides.[24] Where state law so provides, common carriers can also be subject to user fees reasonably calculated to cover the cost that a given use of the public way imposes on either the municipality or other users of the public way.[25] It therefore clearly within the power of the FCC to permit states to demand compensation where their own law so provides. That such compensation be in-kind, in the form of access, services, and facilities provided, instead of monetary payments, should have no effect on the legality of a compensatory access concept.

3. "Preferential" Access is Permissible Under Sec. 202(a).

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[23]. See in general Title II, Communications Act of 1934 (47 U.S.C. Sec. 201 et seq.).

[24] See, for example Diginet, Inc. v. Western Union ATS, Inc., 958 F.2d 1388, 1399 (7th Cir. 1992)(Posner, J.).

[25] Id.

Section 202(a) of the Communications Act provides that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges ... for ... like communication service."[26] A charge that a carrier has discriminated in violation of this section is a three-step inquiry:

"(1) whether their services are 'like'; (2) if they are 'like,' whether there is a price difference; and (3) if there is a difference, whether it is reasonable."[27]

In Report and Order and Further Notice of Proposed Rulemaking (In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992), MM Docket 92-266, The FCC elucidated what kind of discrimination would be considered "reasonable:"

> ". . . [W]e will specifically permit reasonable discounts for senior citizens and other economically disadvantaged groups. We define members of other economically disadvantaged groups as individuals who receive federal, state or local welfare assistance. Cable operators will also have the discretion to create subcategories of economically disadvantaged individuals, so as to limit the scope of discounts that may be available, if a rational basis exists for such subclassification."

Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd. 5631 (1993).

Free or low-cost access for PEG entities (as defined by

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[26] 47 U.S.C. Sec. 202(a).

[27] MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 39 (D.C. Cir. 1990); see also Competitive Telecommunications Association v. FCC, 998 F.2d 1058, 1061 (D.C. Cir. 1993); Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993).

Section 611 of the Cable Act) is clearly reasonable within the meaning of the FCC report language. The provision of PEG access channels, facilities, equipment and services under Section 611 as required under various cities' franchise agreements has not apparently financially harmed either the cable industry as a whole, or those entities which offer PEG access pursuant to agreement with a franchise authority. Generally, cable systems have been extremely financially successful, and those systems which support PEG Access do not seem to perform in a markedly different way from those who do not.

III. CHANGING TECHNOLOGY DOES NOT OVERCOME THE COMPELLING NEED FOR PEG ACCESS ON VDT.

The Third Notice reiterated an earlier determination that video dialtone systems be offered on a non-discriminatory, common carrier basis, and contain sufficient capacity to carry multiple video programmers.[28] The Coalition supports the Commission's decisions in its Third Notice with respect to the requirement that providers of VDT be required to provide expandable capacity and allow multiple programmers access to VDT services, and agrees with the FCC in rejecting the applications of RBOCS who have asked for exemption from upgrading their technology so as to comply with the Communication Act's common carrier provisions.[29] The Coalition strongly supports the Commission's goal of

[28]Third Notice at Par. 25,

[29]Third Notice, FCC 94-269 at Par. 30-39 (November 7, 1994).

"fostering a diversity of information sources to the public," which the Third Notice noted was one of the key purposes of the video dialtone policy.[30]

The Coalition generally supports technologies which expand capacity, but takes no position on the merits or weaknesses of the specific technologies highlighted in the Third Notice.[31] The Coalition does not believe that PEG access should be carried on a "shared channel" basis[32], and specifically rejects the Bell Atlantic proposal that PEG programming be specifically delimited to shared channels.[33] Such sharing over cable systems has generally worked to the detriment of PEG access center, who are often required to share time with commercial programmers. The Coalition believes that an independent channel will be easier to manage and less susceptible to abuse by VDT providers.

IV. CABLE-TELCO CROSS-OWNERSHIP RULES COULD CROWD OUT PEG ACCESS.

The Coalition has significant concerns about cable-telephone cross-ownership rules, particularly in the light of those cases which have found Section 533(b) of the Communications Act

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[30] Id. at Par. 33.

[31] Third Notice at Pars. 269-275.

[32] Third Notice at Par. 272-275.

[33] Id.

unconstitutional[34]. The Coalition continues to support the policy underlying Section 533(b), 47 C.F.R. 63.54, which encourage diversity in programming and protect the franchise regime which is the basis for cable television regulation. The Coalition agrees wholeheartedly with the Commission that permitting local exchange carriers to purchase cable companies in their service areas for the purpose of providing video dialtone would "create incentives for cable companies to evade local franchising requirements,"[35] and particularly the PEG access requirements that franchising authorities often require of cable operators.

However, in light of the decisions of six courts which have found Section 533(b) unconstitutional, it is unrealistic for the FCC to continue to expect that the ban can be retained; therefore, The Commission's request for information which would allow the rule to be waived in some circumstances is no longer apposite. The Coalition and its members would support new FCC regulations which would withstand judicial scrutiny, yet would continue to reflect the serious public policy concerns underlying the cross-ownership rules.

The most serious of those concerns is that the demise of the

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[34]See C & P Telephone of Virginia v. U.S., 830 F.Supp. 909 (E.D. Va. 1993), aff'd 1994 U.S. App. LEXIS 32985 (4th Cir. Nov. 21, 1994); U.S. West, Inc. v. U.S., 855 F.Supp. 1184 (W.D. Wash. 1994), appeal pending; BellSouth Corp. v. U.S., No. CV 93-B-2661-S (N.D. Ala. Sept. 23, 1994); Ameritech Corp. v. U.S., Nos. 93-C-6642 and 94-C-4089 (N.D. Ill. Oct. 27, 1994).

[35]Third Notice at Par. 40.

cross-ownership ban will undermine the authority of local franchise authorities to receive franchise fees and require PEG access in franchise agreements. While the various district courts and one circuit that have considered the issue have held the telco entry ban unconstitutional, those opinions did not speak to the issue of whether a cable entity purchased by a telephone company would become subject to Title II of the Communications Act (evading franchising obligations), or would remain subject to Title VI regulation (imposing, *inter alia*, the requirement to obtain a franchise from the appropriate local authority). However, The Commission itself decided in 1991 that telephone companies providing VDT services were not required to obtain a cable franchise under section 621(b) of the 1984 Cable Act.[36] The United States Court of Appeals for the District of Columbia Circuit recently upheld the decision[37], finding the FCC's action within the Chevron "permissible construction" standard for review of agency rulemaking.[38]

Consequently, the current regulatory regime would appear to allow activities which may work to the detriment of ongoing and future relationships between franchise authorities and cable operators. In fact, it is possible that telephone companies will

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[36]Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 91-334, 7 FCC Rcd. 300, 325-326.

[37]National Cable Television Association v. F.C.C., 33 F.3d 66 (D.C. Cir. 1994).

[38]Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-843 (1984).

purchase existing cable systems[39], bring them into compliance with the technological requirements of Title II, and thereafter operate a virtually identical system as a Title II common carrier, at the possible expense of future franchise commitments.

In light of these concerns, The Coalition urges the Commission to reconsider its decision regarding the necessity of VDT providers to seek a franchise under Title VI. Failure to reconsider the amenability of video services to franchising requirements will generally have the effect of leaving regulation of all television-by-wire to the Section 214 application process and general supervision by state Public Utilities Commissions ("PUCs"). This regime is unacceptable in the absence of laws or regulations requiring or at least permitting state PUCs to request PEG access channels, facilities, support, and services from any companies providing video services in their state. In the alternative, the Commission should require any entities providing television-by-wire to make PEG access channels, facilities, support and services available to states and cities, either as a matter of public interest, or in compensation for use of local rights of way.

Such a requirement would be consistent with the approach taken in proposed Section 659 of the Communications Act, found in Sec.

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[39]Under 47 U.S.C. 533(b), the purchase of cable systems by LECs is legal; 533(b) prohibits common carriers from providing video programming directly to subscribers in its service area. In fact, LECs are permitted "sale-leaseback" arrangements with cable operators. See Third Order at Par. 40.

201(b) of H.R. 3636[40], which would have created PEG parity between cable and VDT operators by requiring PEG capacity, services, facilities and equipment for any video programming affiliate of a common carrier, and by requiring the payment of fees comparable to cable franchise fees.

V. REGULATORY RECOMMENDATIONS

A. Cable-VDT Regulatory Parity Is A Paradigm for PEG Survival.

While the Coalition has serious reservations about the efficacy of PEG access provisions in the 1984 Cable Act (e.g., Section 611, 47 U.S.C. Sec. 531), which permits PEG requirements to be included in local cable franchises (only 20 percent of cable systems have community channels)[41], local control over the creation and funding of PEG access is an appropriate, and in most cases, highly desirable model for funding and administering access. The lack of parity in regulation between cable operators and VDT providers (regardless of beneficial ownership) will have extremely negative consequences for PEG access, because it could result in video service providers migrating from a highly-regulated industry to a virtually unregulated one.

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[40]H.R. 3636, 103rd Congress, Sec. 201(b) (1994).

[41]Testimony of Barbara Popovic, Executive Director, Chicago Access Corporation, before the National Telecommunications and Information Administration, Indianapolis Field Hearing, July 12, 1994, P. 3.

B. PEG Access is Supportable by Compensatory Access in Payment for Private Use of Public Rights-of-Way

Financial support for access should flow naturally from the use that telecommunications entities make of federal, state and local rights-of-way under streets and roads and through other publicly-owned spaces. The use of public property and public rights-of-way to provide television-by-wire should be accompanied by public interest obligations on telecommunications entities to provide just compensation to the community for use of those rights. The Coalition continues to regard the imposition of rights-of-way fees on VDT and cable service-providers by local franchise authorities as an appropriate and efficient means of ensuring that states and localities are adequately compensated for the use of their property. Such compensation can and should be made to states and local governments in part by providing them (and/or local non-profit community groups) low-cost access to a relatively small percentage of television-by-wire channels, and by providing them the ability to obtain monetary or in-kind support, so they will be able to provide the services, equipment, and facilities which permit access to anyone who wishes to produce programming.

In a previous comment filed with reference to this rulemaking, filed July 12, 1994, a coalition of organizations and local governments concerned with electronic redlining by VDT providers pointed out that the use of public property and public rights-of-way to provide television by wire imposes public

interest obligations on the provider as just compensation to the community for use of those rights.[42] This Coalition continues to regard the imposition of rights-of-way fees on VDT service-providers by local franchise authorities as an appropriate and efficient means of ensuring that states and local governments are adequately compensated for the use of their property. The Coalition believes that such compensation can and should be made to states and localities in part by offering them (or non-profit community groups) access to VDT channels, and facilities and technologies to allow VDT access.

C. "Will-Carry" Won't.

A telephone company proposal before the Federal Communications Commission involves "will-carry" agreements in which the VDT provider would voluntarily dedicate some channel capacity to PEG access and PEG programming. This "solution" is unsatisfactory. Such voluntary, non-contractual commitment would allow a phone company to reserve the right to terminate access whenever it becomes profitable for it to do so. Such voluntary, ad hoc arrangements are not reasonable guarantees of universal service as it relates to community access or meaningful democratic discourse.

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[42]Comments of the Alliance for Communications Democracy et al. (Matter of Petition for Rulemaking to Adapt Section 214 Process to Construction of Video Dialtone Facilities), Rulemaking No. 8491, filed July 12, 1994, at 4-8.