Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco To Assign and Transfer Control of FCC Licenses and Other Authorizations	))))))))	MB Docket No 14-57

COMMENTS OF AMERICAN COMMUNITY TELEVISION AND THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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ACTING PRESIDENT

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TABLE OF CONTENTS

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REPLY COMMENTS OF
AMERICAN COMMUNITY TELEVISION AND THE
SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS

SUMMARY

American Community Television ("ACT") and SouthEast Association of Telecommunications Officers and Advisors ("SEATOA"), submit these comments both as ACT individually and as ACT and SEATOA ("ACT Commenters").

Community Impact of PEG

Public, Educational and Government (PEG) access television has existed since the mid-1960's and was codified in federal law in the 1984 Cable Act. PEG access television serves a variety of purposes, providing transparency of local government, educational programming, religious programming, community organization programming and as a free-speech forum for organizations and individuals in local communities. Additionally, PEG access television provides state and federal government entities tens of millions of dollars in free air time each year.

PEG Setbacks

PEG access has been and is currently challenged by the cable industry and is particularly challenged by the proposed transactions between Comcast Corporation, Inc., Time Warner Cable Inc, Charter Communications, Inc., and SpinCo (currently referred to as Midwest Cable, LLC).

PEG access television has suffered setbacks in the last few years to include, but not limited to:

1) Loss of funding due to statewide franchising laws;

2) Slamming of PEG channels to an extreme upper digital tier (900's, 600's);

3) Arbitrary practice of charging the municipality, nonprofit entity managing PEG, educational institution for the transmission of the channel by the cable operator;

4) The requirement to enter into a Memorandum of Understanding in states with statewide franchising even when there is no such provision in state law;

5) PEG access closures in various states with statewide franchising due to loss of funding or the operator walking away from the management of the channel;

6) Hard-ball negotiations in local franchising requiring an inordinate amount of communities to commence or consider the rare formal franchise renewal process;

7) The lack of program guide descriptions and a Video On Demand (VOD) platform or DVR functionality.

ACT and ACT Commenters recognize that the proposed transactions will mean greater negative PEG practices (particularly by Comcast and Charter) and will likely become more widely spread in those States that become new Comcast, Charter or the Charter controlled Midwest Cable territories. In addition, the creation of these larger and more consolidated cable operators will mean a near monopolistic business model. Without significant transaction conditions, these inter-related companies will have an unfair advantage in negotiations or other interactions with municipalities and nonprofits that manage PEG entities and potentially a harbinger of further consolidation of the cable industry following the precedents set in this transaction.

COMMENTS

The most important matter before this Commission regarding the proposed transaction between Comcast,[1] Time Warner,[2] Charter[3] and SpinCo[4] is what will be the impact on the general public if this Transaction is approved. ACT believes that included in the "general public" are the franchising authorities that allow the cable operators to use the public rights-of-way and the PEG operators.

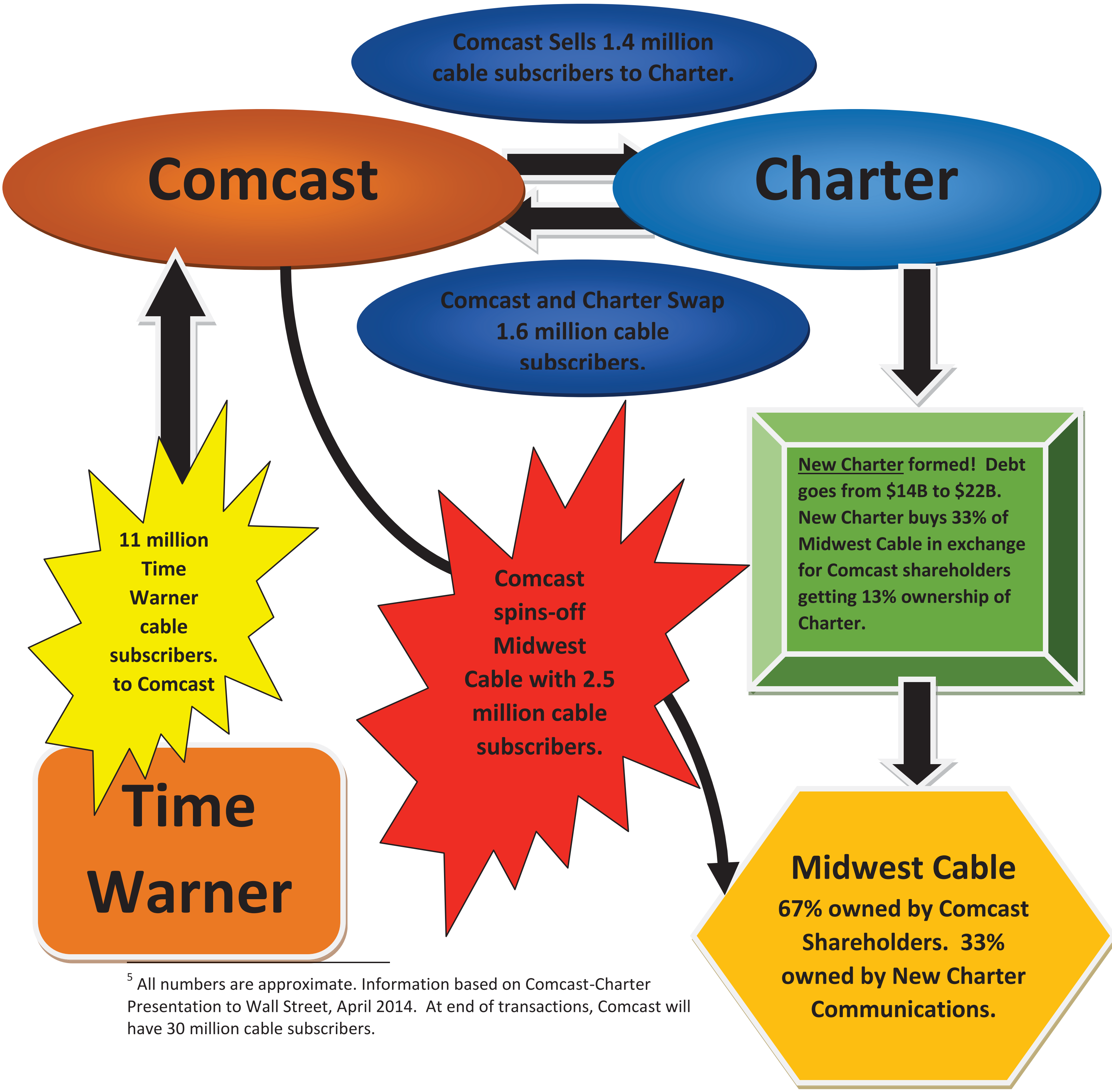
[1] Comcast Corporation, Inc.
[2] Time Warner Cable, Inc.
[3] Charter Communications, Inc.
[4] Currently Midwest Cable, Inc.

Public, Educational and Government (PEG) access television has existed since the mid-1960's and was codified in federal law in the 1984 Cable Act. PEG access television serves a variety of purposes, providing transparency of local government, educational programming, religious programming, community organization programming and as a free-speech forum for organizations and individuals in local communities. Additionally, PEG access television provides state and federal government entities tens of millions of dollars in free air time each year.

As ACT pointed out in its initial comments, ACT believes that if this Transaction is approved, it will set the precedent for many more transactions that will follow the basic formula contained in this Transaction – that is create new companies not directly controlled by Comcast but with significant interlocking controls and ownerships that will tie the first, second and fifth largest cable operators together. This will transform Comcast from being the 800 lb. Gorilla it currently is into an 8,000 lb. Gorilla, and that transformation will make it virtually impossible to effectively regulate and control with respect to local franchising and PEG operations.

As proposed, Comcast shareholders will own two-thirds of SpinCo (Midwest Cable) and 13% of Charter which is unprecedented in today's cable environment. The chart on the next page illustrates the various transactions and ownership of these companies.

TRANSACTION OVERVIEW[5]



[5] All numbers are approximate. Information based on Comcast-Charter Presentation to Wall Street, April 2014. At end of transactions, Comcast will have 30 million cable subscribers.

Instead of direct head-to-head competition, the "Brave New World" will be one of common ownership. Such common ownership and control will not serve the public interest - including the franchising authorities and PEG operations - as these three companies will be able to exert undue power and control over these local entities.

For example, Comcast *et al* has submitted a 300 plus page document to the Commission regarding this Transaction yet it has yet to provide a final agreement between Charter and SpinCo regarding the roles and responsibilities that Charter will have in operating the SpinCo properties. One can speculate the reason this service agreement has yet be finalized is it could contain detailed descriptions as to the underlying Charter control over SpinCo that would not be in the public interest. The finalization of this service agreement is something the Commission should demand and make public before the Commission rules on this Transaction. What if Comcast was to agree to license its Xfinity operating platform to Charter and SpinCo; would then Comcast be controlling all of the technical aspects of the cable system? What would happen if Comcast then was to decide that cable subscribers would have to lease a proprietary set-top box in order to access the cable products? Is this then a violation of the self-imposed 30% ownership condition because of this implicit control?

With the interlocking shareholder control proposed in this Transaction, it is unlikely that either Charter or SpinCo could opt-out of any such tying arrangements. What about the approach to franchise renewals? What about PEG activities? The opportunities seem endless. How much "control" can and will be exerted by this 8,000 lb. Gorilla? The Commission must assume that without effective opt-out conditions which have not been proposed for Charter and SpinCo that Comcast will be effectively controlling all of these entities or at best making sure that Comcast's business interests are protected.

As addressed in our initial comments, is the next step Comcast buying Cablevision and/or Cox and creating SpinCo II? Comcast has to be given credit for a very creative solution to pretending to follow the 30% threshold on paper but in practice controlling three of the five largest traditional cable operators. If it can, and will, happen on the technical, engineering and programming level, think of what this 8,000 lb. Gorilla can do with respect to franchise renewals and PEG operations.

Consider an 8,000 lb. Gorilla that set a red-line in the sand regarding PEG channels and the migration to HD. Given that approximately one-third of PEG operations across the country operate on less than $200,000 annual budget what will happen when the Gorilla says "no" to a renewal request for a HD PEG channel? The local community will need to spend several hundreds of thousands of dollars to invoke the formal renewal process to save a community need that has an annual budget of $200,000 or less. It will be easy to see what that local City Council will say – 'We are not spending that money to fight the Gorilla just to save a $200,000 annual operation; let us consider spending that money on a new fire truck.' PEG goes away, the Gorilla gets to recapture channels to put on its choice of programming (like Russia Today) and the public loses its local programming that the community wants. Who wins? The Gorilla wins, and franchising authorities, PEG and the general public loses. It is a scenario that is all too common today with Comcast and Charter, let alone a three-way combined and controlled Gorilla. The legal budget that is set aside for Comcast, Charter and potentially for SpinCo to fight the local franchise authorities is significantly greater than that spent by local communities in protecting its community's needs and interests. It is precisely this unfair advantage that ACT is most concerned with, and we ask the Commission, if it approves this Transaction, to make these unfair guerilla tactics illegal with specific conditions. The Commission needs to enforce and protect the public interest by having PEG and its local commitments part of the compact for Comcast, Charter and SpinCo to operate in the public rights-of-way, as set forth in the Cable Act.

Much has been made in press reports and in Comcast's combative filing about "extortion" being demanded by programmers and other opposing parties. Comcast and Charter need to look in the mirror considering the way they treat the local franchising authorities and PEG operations in franchise renewal. It has become a race to the bottom for the operators in limiting any regulatory control and PEG support. There can be no doubt that their deep pocket legal resources are no match for local communities, save the very large. As a result the Commission is in a unique position to affect *real change* by leveling the playing field with respect to PEG support and commitments.

In the matter of treatment of PEG access operations, in the time since we filed our first comments, Charter has slammed PEG access channels in Western Massachusetts from their positions at 11, 12 and 13 to 191, 192 and 194. As illustration, in Northbridge, Massachusetts, Charter moved the PEG channels from 11, 12, 13 to the 191, 192 and 194 without informing the PEG access operator. This was done despite the franchise agreement clearly stating that the channels would be on 11, 12 and 13. This action was a direct violation of the franchise agreement, see below.

13.3 PEG Access Channels

The Licensee shall continue to make available to the Town and/or the Access Designee three (3) full-time Downstream Channels for PEG Access purposes on channels 11, 12 and 13. Said PEG Access Channels shall be used to transmit non-commercial PEG Access Programming to Subscribers without charge to the Town and/or to the Designee except external costs may be externalized and passed through to the extent permitted in accordance with FCC rules. Underwriting of the costs of access program production is permitted, provided the sponsors do not advertise on the programs. Underwriter acknowledgements similar to those appearing on public broadcast stations shall be permitted.

When the Northbridge Selectmen confronted Charter at its regular meeting, the Charter government relations person, Mr. Tom Cohan, admitted it was a mistake but Charter would not change the channels back.

The Selectmans' meeting is available on YouTube at http://www.youtube.com/watch?v=DZdhea-vigI&feature=youtu.be

In the video, Mr. Cohan claims that the move was necessary for the digital upgrade, he also states that the lower channel positions are not important. However, Charter replaced the PEG channels with QVC, Telemundo and NFL Network, in the 11, 12 and 13 position. Two of these channels are important profit centers for Charter, if the lower channel positions were not important, why did Charter move them to the lower positions? ACT submits these positions are important and that is why Charter slammed, in direct violation of the franchise agreement, the PEG channels off these lower positions.

This town of 15,000 has considered their options, and even while Charter is in breach of contract, the town is reluctant to enter into a legal battle with Charter, knowing the monetary resources it will take to force Charter to comply with the legal binding contract.[6]

Charter has repeated this antagonistic toward PEG access in Worcester, Uxbridge and Douglas, Massachusetts, slamming the channels for no good reason except that they can. One would think that in face of the acquisitions and transactions and the FCC review, Charter would have exhibited restraint. The fact that they didn't implies that even in the face of regulatory scrutiny, Charter has no regard for the public interest all the while exploiting the very public rights-of-way that make their business even possible.

Likewise, Comcast throughout its comments, attempts to paint a picture of the costs associated with PEG. Only in a Comcast alternative universe is there any cost. Comcast has suggested that PEG "costs" them $65 million per year.[7] While Comcast did not provide any more detailed information on how they arrived at that amount, what is clear is that PEG operations are part of the compact they proposed and agreed to by using the public rights-of-way in addition to franchise fees. Using public right of ways is very simply a cost of doing business—one which is

[6] See Attachment A, Communications Daily article on the Northbridge Channel Slamming, October 28, 2014.
[7] *See* Comcast Comments at 296.

critical to cable operators' ability to conduct their business, like car manufacturers that must pay for and maintain factories to build the cars on which its sales and profits are based. The fact that the payment towards the value of using the right of ways is partially in the form of PEG channels and resources does not translate to an "additional cost" paid by cable operators, as Comcast implies.[8] If it is costing them too much, then we suggest they get out of the business. However, we know from the returns generated by the cable operations this is just not the case. Profits continue to grow and will grow for the foreseeable future. In 2013, Comcast generated over $20.535 billion is cable video-only revenues[9] of which the $65 million they say they spend on PEG is just 0.3 percent, a ridiculously small percentage. More importantly, an uninformed reader might misconstrue that this is a cost to Comcast but it is not. Comcast, Charter and SpinCo will merely pass these costs on to subscribers in their cable bills. This is nothing more than a pass-through cost for Comcast, Charter and SpinCo, in the same way they pass through to subscribers all their programming costs.[10] These programming costs do not impact their profits. These PEG operations are a result of identified community needs that the local community wants and Comcast, Charter and SpinCo merely pass-through those costs to their subscribers. Comcast argues that satellite companies like DirecTV do not have PEG obligations, but DirecTV is not using the public rights-of-way. Would Comcast want to pay for the satellite fees that DirecTV has to pay? Likely not. Disingenuously comparing Comcast's costs to DirecTV costs is another way for Comcast to pretend to be the victim. As we addressed in the Reply Comments, it was

[8] $65 million per year translated in 2013 to 87 cents per home nationwide, a cost which is passed through by Comcast, and paid directly the subscribers. *See*: "Comcast Cable is the nation's largest video, high-speed Internet and phone…2013 in 75 million homes nationwide." corporate.comcast.com/news-information/company-overview.

[9] *See* Comcast 2013 SEC Form 10-K, page 3.

[10] Recently the cable operators have begun to break out and list the programming fees they pay for broadcast. This practice has been done for years with PEG programming fees. It is a dishonest attempt to negatively influence the subscriber about PEG and now, about broadcast. If they were being honest and transparent, they would give subscribers a complete list of all the programming fees they have paid and are capturing from the subscriber.

the cable operators that during the initial awards of local franchises that proposed these local PEG services to enhance their ability to be awarded the franchise. Now many years later, and after securing a utility-like service, they now want to distance themselves from providing PEG obligations because of the phantom "costs." What is next? Franchise fees, leased access, customer service standards, etc.?

Since our initial and reply comments, ACT was sent an email that illustrates the falsehood of the cable operators' position on the cost of PEG and illustrates their lobbying position. The following email was sent to a Councilman, who is supporting the federal legislation known as the Community Access Preservation Act, by a government relations representative of one of the companies in this Transaction[11]:

[11] We have redacted identifiable information out of concern that the representative might face reprisal.

-------------------------- Original Message ---------------------------
Subject: CAP ACT
From: [redacted]
Date: Tue, October 14, 2014 12:47 pm
To: [redacted]

Councilman [redacted]

For your consideration:

Here are my thoughts regarding the CAP ACT and the negative impact this legislation would ultimately have on the cable industry, my company, customers, staff, and ultimately the Cities:

First, the legislation, as written, would lead to higher cable rates. The Cable Act carefully balances the needs of franchising authorities and consumers when it comes to PEG. The Act allows franchising authorities to charge a cable franchise fee of 5% of "gross" revenue annually. As a business owner yourself, you understand the impact of expenses.
Additional PEG fees are ultimately paid by the cable television consumer.
A fee our competitors are not required to support. As rates increase, consumers make purchasing decisions. When we lose customers, revenue drops and so do the franchise fee payments the city ultimately receives.
A no win for all.

Example: I can eat at [redacted] restaurant and have breakfast for $10 a plate 'OR" I can eat breakfast at "XYX" and get breakfast for $7 a plate for the same level of service and great food. It isn't difficult in today's economy to understand what customers will choose.

Secondly, the legislation, as written, imposes additional PEG obligations on cable operators and would exacerbate the competitive disparity cable already faces. As I eluded to above, Directv and Dish serve over 34 million households and do not provide local PEG programming or contribute to PEG efforts. Although the bill amends the definition of "cable service" to apply regardless of transmission technology, it retains the reference to "one way transmission" of programming that some entities suggest exempts them from cable regulation.

Third, stifles growth. I am incredibly proud of the innovation our industry has brought to the communities we serve. Internet, hundreds of HD channels, phone, home security and much more on the horizon. To give you some perspective... a grant of $50k for PEG, if spent in support of other initiatives, could potentially give my customers 14 additional HD services. "Fourteen". Another option for the $50k could be increasing broadband speeds or extending plant to areas not yet served. All of which help grow business and increase job growth potential.

Fourth, adversely impacts jobs. Simply put, if the business doesn't grow - jobs can't be sustained. This legislation has tentacles that far surpass PEG. Something the Cities should consider.

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Over my 35 years of working in the cable television business in [redacted] the
companies I have been privileged to work for have always been community minded,
worked as partners with the Cities in servicing the citizens, maintained great
relationships with all the Cities, and worked extremely
hard at ensuring we have a positive economic impact in terms of jobs.
While I agree PEG and visibility into the Cities is important - this legislations
is poorly written and not in anyone's best interest.
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[redacted]

ACT was surprised to receive this email. While we know that the cable operators are duplicitous, saying they support PEG in public and in their FCC filing at the same time communicating with elected and appointed officials their lack of support with exaggerated claims.

The operators know that cable rates on not dependent on PEG fees because we see no significant difference in cable bills in states that allow PEG fees and those that have eliminated them. For instance, in Kansas, when PEG fees were stripped away from local government in 2006 through statewide franchising, the cable bills did not go down, instead they went up, and continue to this day to go up an average of 6% to 7% per year. The FCC's own study "Report on Average Rates for Cable Programming Service and Equipment"[12] shows that cable rates increased at a greater

[12] May 16, 2014. http://www.fcc.gov/document/report-average-rates-cable-programming-service-and-equipment-2

rate when the cable system was deregulated than those subject to rate regulation. Therefore, even in the face of effective competition (as referenced by the writer of the aforementioned email); cable rates rise faster than in those systems not meeting the effective competition test. PEG access television has nothing to do with these price increases.

These are not additional obligations on cable operators that were not in the Cable Acts for the last 30 years and the writer of the email knows this. This is a re-statement of the provisions in the Cable Act to cure harms to PEG done in those statewide franchising states when franchising was taken away from the local community and sent to the state. The CAP Act legislation does not overturn statewide franchising, cable operators will have to go to the state for a franchise (except in those states that gave perpetual franchises or allowed the cable operator to choose local franchising). However, it does restore PEG to the original intent of the Cable Act of 1984 and 1992, that being cities have the ability to ask for PEG channels, support for PEG channels, placement of the PEG channels and transmission of the PEG channels.

The writer of the email claims that money spent on PEG will take away resources from other potential projects the cable operator might do. PEG costs the cable operators nothing as those fees are passed on to the subscriber the same as all other programming costs (for instance $6.00 to $8.00 per month for ESPN). Additionally, using Portland, Oregon as an example, Portland is to receive eight High Definition PEG channels to be rolled out over the next three or so years and they will receive 3% PEG support, as part of the conditions negotiated in the local franchise. It can hardly be argued that these provisions in Portland are in any way going to stifle growth or they would not have been agreed to by the cable operator.

Finally, the cable company executive who wrote this email claims the legislation mentioned will cost jobs. The CAP Act will not eliminate jobs, but according to a 2011 survey conducted by ACT, will save or potentially create 8,400 jobs in PEG facilities across the country.

The issues raised above illustrate that the cable industry cannot claim to be supportive of PEG access television, while at the same time, communicating false and derogatory information regarding PEG access television and efforts being made to secure it into the future.

Comcast has provided comments on the transition to HD for PEG complaining about the cost of such a transition.[13] Yet Comcast has failed to give the Commission the full picture on future digital and HD transitions. Currently most if not all of Comcast's systems and Charter's systems have undergone a full digital transition whereby all analog signals have been replaced with digitally compressed channels.[14] In the standard definition world, one 6 MHz analog signal can deliver 6, 8 or10 digitally compressed channels which has significantly increased the available video channel capacity. For high definition, the same can be said, as one 6 MHz channel can deliver 2 or 3 HD signals.[15] Therefore, if Comcast were to offer all 3 PEG channels in HD they

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[13] See Comcast Comment at 297. "… improved PEG performance …". If such PEG performance improvements are as a result of this digital transition, why is Comcast and Charter rejecting the move to SD and HD PEG channels in franchise renewals?

[14] See "City, schools negotiate with Charter to get cable service back", NBC Montana, August 28, 2014. http://www.nbcmontana.com/news/city-schools-negotiate-with-charter-to-get-cable-service-back/27781240. Missoula County Schools estimate it will cost them $60,000 to $80,000 per year to rent boxes for televisions in the classroom because of Charter's digital transition.

[15] Andrew Afflerbach. "The State of the Art Cable Television and Broadband Technology, prepared for the City of Seattle, Washington", October 9, 2013, p. 17. http//www.ctcnet.us/wp-content/uploads/2014/01/SeattleCATVTechnologyReport.pdf

would recaptures at least 2 channels. When Comcast transforms three PEG channels into SD from analog it recaptures approximately 2 ½ analog channels for their use. If all three of these channels were broadcast in HD to reach all subscribers in the event HD is not offered on Basic service, it would take only one channel, still leaving Comcast with still 1 to 1 ½ recaptured channels. So what is what is the true motivation by Comcast in not offering HD PEG channels (and if needed, in both SD and HD formats to ensure PEG is offered on the Basic Tier)? It is not using up scarce system capacity as with the current digital compression ratios; they would actually still *recapture* bandwidth not *use more* bandwidth. The real problem is that offering SD and HD PEG channels would not allow Comcast, Charter and SpinCo to free up more bandwidth to new niche video programming like the Russian Today (an English language Russian news channel), Al Jazeera America, and CCTV (an English language Chinese news channel) or more bandwidth to upgrade internet speeds or offer voice services. One only has to ask the question, which is more important to the local citizens, Russia Today or the local City Council meeting? It reflects an internal mindset that PEG programming is unimportant from a cable industry perspective, irrespective of the local community needs. One also has to ask why Comcast is using up this scarce bandwidth to provide both SD and HD feeds of many satellite delivered services such as ESPN, HBO and all of the Comcast owned programming. Do we really need Russia Today in both SD and HD as opposed to PEG in both SD and HD? Why is PEG being singled out for the migration to HD when other programmers seems to gain such dual carriage? In simple terms, local franchising authorities and their PEG operations have very little leverage in gaining HD carriage except through long and expensive legal battles. . The Commission can level this playing field and reign this 8,000 lb. Gorilla with realistic PEG conditions.

Comcast stated that it is "a true partner in public access development."[16] This comment was made by one access center and must not be construed as representative of PEG operators across the country. If the Commission asked PEG operations across the country if Comcast was such a "partner" the overwhelming majority would not view Comcast as a "partner;" in fact the picture would be just the opposite. The Commission only has to look at Comcast's history of lack of cooperative support with PEG operations in the Twin Cities area. Comcast cite brief support letters by 3 PEG operations to bolster a "rosy" picture of their PEG support.[17] National organizations like ACT, NATOA and ACM have hundreds if not thousands of stories where Comcast, Charter and Time Warner have been uncooperative with PEG operations. Comcast will undoubtedly suggest that these stories were a result of over-zealous PEG operators which the Commission should take with a grain of salt. If Comcast and Charter truly supported PEG operations, we would have seen PEG on the EPG, HD PEG channels, support for voluntarily allowing franchise authorities and PEG centers to use capital funds for all PEG activities, ensuring cable service to schools and firehouses is not affected by changes to cable systems resulting in additional charges for boxes, and they might be supportive of—or at least not opposing— legislation that will reverse harms done to PEG Access Television through the statewide video franchising legislation passed in various states at the behest of the cable industry.

Comcast has addressed the requests by many commenters regarding the availability of interactive programming guide information for the PEG channels.[18] We applaud Comcast's comments and hope that they have communicated this public position to their local franchise personnel because

[16] *See* Comcast Comments at 297, fn 943.
[17] *See e.g.*, fns 942 and 944.
[18] See Comcast Comments at 294, fn 934.

such accommodation has been in the past difficult for local franchising authorities to obtain from Comcast. More importantly, ACT wants to be sure that Comcast's position on including PEG channels fully in the on-screen programming guides applies to both Charter and SpinCo.

Comcast has voiced concern that the Commission need not address many of the PEG issues because there is pending federal legislation that would address many of these items.[19] At best, this suggestion is a Red Herring. Comcast knows all too well that this legislation has been pending for many years in Congress with the sole purpose of correcting many of the wrongs that PEG has suffered over the past several years at the hands of the cable industry. NCTA and Time Warner Cable have both publically opposed such previous legislation. Given the limited PEG lobbying resources compared to the well-funded industry lobbyists,[20] its passage will be a hard fought battle, advanced by local partners that use these PEG channels.

The Commission has been presented with many issues related to PEG. Many are well within the Commission's jurisdiction to address and clearly within Comcast's, Charter's and SpinCo's discretion to voluntarily agree to as a condition. For example, other commenters have addressed a voluntary commitment to allow franchise authorities and PEG centers to use PEG capital funds for all PEG activities.. As these funds are fully passed-through to subscribers, why would Comcast, Charter or SpinCo care whether they are spent on capital or other PEG-related needs? The Cable Act gives the cable operator to ability to voluntarily agree to provide operating funds,

[19] *See* Comcast Comments at 295, fn 940.
[20] At the federal level alone, Comcast spent $18.8 million in 2013, before the current merger, making it the seventh most among all entities according to the non-partisan Center for Responsive Politics. Lobbying efforts of franchising authorities and States are not reflected in this number.

and doing so would not harm Comcast's ability to continue charging subscribers for its investment.[21]

We hear from time to time that local governments need to have "skin in the game," meaning that the cable operators want the local governments to spend some of their own money for these PEG operations. First, when resources are paid to local franchising authorities for use of right of ways, the franchising authority does not give up its sole right to manage local affairs. Second, along with franchise fees, PEG support funds are passed through to subscriber, minimizing the cable operator's payment for use of right of ways by off-loading the burden to consumers, so that in effect, the subscribers are paying for the cable operator's right to conduct business in rights of way owned by the public (and subscribers). Any further demand for franchising authorities to add their own PEG support as a condition of receiving payment for the right of ways results in Comcast having virtually no "skin in the game" itself. If subscribers do not like what is or is not being provided by the PEG operations, they get to express that with their votes for City Council members.[22] It is a local choice, addressing local needs, and is not one motivated by a business profit. If Comcast, Charter and SpinCo were truly committed to PEG as they claim, they should agree to include the conditions that have been proposed by many commenters, and in these comments as part of this Transaction.

[21] Comcast has in many cases charged subscribers for a rate of return of 11.25% on one-time capital grants. In this case, Comcast not only gets full recovery of its capital grant from subscribers but also reaps a profit of 11.25% set way back in 1992 and totally inconsistent with today's financial markets.

[22] ACT estimates that the supportive comments filed by PEG operators represents approximately .002 of all PEG operators, conservatively based on 1,500 PEG operations in the U.S.

Comcast has addressed its commitment in the Comcast-NBCU merger regarding PEG of the future, its so-called Project Open Voice.[23] Let us be clear, this Project Open Voice was an effort for five PEG centers to see how much PEG programming could be made accessible, in addition to carriage on PEG channels, in a video on demand IP-based service. As we stated in our initial comments, Project Open Voice is an augmentation to the traditional linear video delivery system – it is not a replacement for linear delivery. As we have discussed, as this Gorilla gets bigger and bigger, where will be the new red-line in the sand? Will it be that PEG will only be agreed to in franchise negotiations in an on demand IP based service? Project Open Voice is not any indication of a PEG commitment by the parties (and unclear if it applies to Charter and SpinCo) but rather an attempt to deflect attention away from the real PEG issues identified by the many commenters.

In conclusion, the creation of a new "too big to fail" Gorilla is not in the public interest on many levels, andimply related to PEG operations, the size and reach of these re-constituted companies will likely have a negative impact on the PEG community without commitments from these parties to embrace and support PEG now and in the future. PEG operations should not be allowed to become the Bully Pulpit that these three companies use to intimidate local franchising authorities by diminishing the vital role PEG plays in voicing local community needs and transparency of government activities.

We request that the Commission protect PEG access television by rejecting the proposed Transaction as not being in the public interest. Alternatively, if the Commission decides to approve the proposed Transactions, conditioning the proposed Transactions on curing the various

[23] *See* Comcast Comments at 298.

problems we outline in our previous comments and in these comments, to prevent further consolidation of the traditional cable industry, and with significant conditions to protect PEG as described by many commenters in this proceeding and summarized in our Reply Comments. The PEG conditions are as follows:

1. The Commission should require Comcast, Charter and SpinCo to agree to a voluntary commitment to remove the restriction that PEG funds be used only for capital, and allow any PEG funds to be used for any PEG-related purpose.

2. The Commission should require Comcast, Charter and SpinCo to make all PEG channels on all of their cable systems universally available on the basic service tier, in the same format as local broadcast channels, unless the local franchise authorityspecifically agrees otherwise.

3. The Commission should protect PEG channel positions, ensuring carriage on the Basic Tier of service, migrating PEG channels to the digital tier only when the local broadcast channels are moved, ensuring the channels allocated to the Basic Tier are not separated from local broadcast affiliates, and PEG channels are not forced into a high-number "channel Siberia."

4. The Commission should prohibit Comcast, Charter and SpinCo from discriminating against PEG channels, and ensure that PEG channels will have the same features and functionalityand the same signal quality, as that provided to local broadcast channels, including to ensure onscreen menus that provide PEG programming information; provide DVR functionality; provide HD signal format; not impose any additional equipment

requirements or subscriber charges to receive PEG programming; and provide video on demand capabilities for PEG channels.

5. The Commission should require that all PEG programming is easily accessed on menus and easily and non-discriminatorily accessible on all Comcast, Charter and SpinCo platforms.

6. The Commission should require that PEG channels have the ability to be distributed on HD tiers.

CONCLUSION

The Comcast, Time Warner, Charter and SpinCo, transactions are unprecedented and pose a threat to the public interest. In particular, Comcast will have too much power over local cable franchising and the power that has been entrusted to franchising authorities through federal legislation to require compliance with conditions that promote the public interest.

American Community Television urges the Commission to reject these transactions and mergers, and failing that, require these companies through conditions placed on the transactions that will promote and protect one of our nation's most valuable communications and free speech resources; that being the Public, Educational and Government (PEG) access television stations.

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below signed signatory has read the foregoing Consolidated Opposition to Comcast Appeals of Local Rate Orders, and, to the best of my personal knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,

Bunnie Riedel

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EXECUTIVE DIRECTOR

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