

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**COMMENTS OF WHITE PLAINS CABLE ACCESS TV**

These Comments are filed by White Plains Cable Access TV in support of the comments filed by the Alliance for Community Media (“Alliance”), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors (“NATOA”), and other national local government organizations. Like the Alliance, White Plains Cable Access TV believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access (“PEG”) services in our community.

**Cable Franchising in Our Community**

**Community Information**

White Plains, New York is a city with a population of 53,000 located in the New York Metropolitan area. Our franchised cable provider is Cablevision of Westchester. Our community has negotiated cable franchises since 1984 with three different cable operators of the same system, due to transfers of ownership.

**Our Current Franchise**

Our current franchise began on January 1, 1996 and expired on December 31, 2005.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Over the life of the franchise agreement Cablevision has paid \$800,000 in capital grants to support the PEG channels. These grants were made in lumps sums annually for the first eight years of a ten year agreement. The grant money was used to purchase and upgrade equipment for the three PEG access channels.

Our franchise contains the following requirements regarding emergency alerts: "Franchisee shall provide, operate and maintain an emergency alert system to allow notification at all times to all Subscribers of any emergency conditions which shall at a minimum permit properly designated officials to provide notice by remote use by telephone of an audio override message on all channels (other than designated emergency notice channels)." These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. While there has never been an emergency dire enough to use this system in the City of White Plains, the PEG channels have been used extensively for disseminating information about minor emergencies such as: snow emergencies, school closings, local flooding, road closings, and hurricane warnings.

### **PEG Access Services**

White Plains Cable Access TV has provided access services in our community for twenty-two years. In conjunction with the city school district we operate three access channels. In our most recently completed fiscal year, White Plains Cable Access TV provided 580 hours of new original local programming to the cable subscribers. The community used our equipment and facility 850 times for 1660 hours of use. Below are the highlights of our services to the community.

- Video bulletin board with text and graphics for community announcements. Over 2000 new messages from local governments, not-for-profit community organizations, and local schools and churches transmitted annually

- Community-produced television programming for special interests including seniors, non-English-speaking, ethnic and cultural groups, youth, people with disabilities, advocacy groups, and health care, just to cite a few examples.
- Staff-produced television programming on topics of interest to the local community.
- Dedicated channel capacity specifically for non-profit organizations to cablecast locally-produced programming.
- Dedicated channel capacity specifically for religious organizations to cablecast locally-produced programming.
- Free viewing of cable service at selected public sites.
- Local news coverage (not on local broadcast stations).
- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production instruction.
- Video production facilities including a three camera TV studio, location equipment, analogue and computer-based editing, and low cost production services for those in need.
- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Technical design, installation, and maintenance support of government and community organization production facilities.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Gavel-to-gavel coverage of educational governance proceedings.
- Gavel-to-gavel coverage of local government meetings/hearings and other select "local" governmental proceedings.
- Interactive participation in government meetings at community sites.
- Election night coverage.

## **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. For instance: Both state and local law require one, if not more public hearing on past performance of the cable operator before granting or renewing a franchise

## **Competitive Cable Systems**

Our community has recently been approached by a Bell Operating Company to provide service. If it were not for Verizon's placing of their hub boxes at pedestrian level in the way of sidewalks, driveway lines of sight, posing a danger to snowplows, and angering homeowners prompting the city to confront Verizon, they may not have started negotiations at all. The city has only met briefly with Verizon on two occasions and to date nothing of substance has been discussed. While the city welcomes negotiations with Verizon, they seem less than eager to negotiate an agreement. The first meeting was held back in September of 2005, and they would not schedule another meeting until January 2006. At the January meeting Verizon again put off city negotiators for an additional six weeks while they wait for the outcome of a related ruling by the New York State Public Service Commission. The actions of Verizon indicate that the greatest hindrance to the roll-out of their video services, and hence competition to the existing cable provider is Verizon's preference for lobbying the state and federal governments instead of putting efforts into negotiation franchises.

## **Conclusions**

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has

provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in the City of White Plains. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of primarily local interest.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The White Plain Cable Access TV therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law..

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

White Plains Cable Access TV

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