

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.**

In the Matter of	)	
	)	
Petition for Declaratory Ruling Regarding Primary	)	MB Docket No. 09-13
Jurisdiction Referral in <i>City of Dearborn et al. v.</i>	)	
<i>Comcast of Michigan III, Inc. et al.</i>	)	CSR-8128
	)	
Petition for Declaratory Ruling of the City of	)	CSR-8127
Lansing Michigan	)	
	)	
Petition for Declaratory Ruling of The Alliance	)	CSR-8126
For Community Media, <i>et al.</i>	)	

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## SUMMARY

Comcast has long supported public, educational and governmental (“PEG”) programming. Both in the delivery of PEG channels to its customers and in the funding of PEG expenses, Comcast has worked cooperatively with thousands of local governments and PEG programming producers to address the needs and interests of PEG programmers, local franchising authorities (“LFAs”), our communities, and our customers. Comcast will continue that cooperative relationship as we address the compelling need to transition our systems to digital technology. However, Comcast must oppose the Petitions for Declaratory Ruling to the extent they seek to confer preferential status on PEG channels that would constrain cable operators’ ability to deliver PEG programming in a digital format and reclaim the bandwidth needed to provide consumers with new and improved video services, additional high definition (HD) channels, greater video-on-demand (VOD) content, more ethnic programming, and faster Internet speeds, among other enhancements.

The transition of Comcast cable services, including PEG channels, from analog to digital is occurring in a highly competitive marketplace. Because all of our largest competitors – DirecTV, Dish, Verizon FiOS, and AT&T U-Verse – already offer all-digital platforms, they do not face the important analog-to-digital transitional challenges that confront Comcast. Accordingly, it is a competitive imperative for Comcast to make this transition as rapidly as possible in order to bring its customers the public interest benefits associated with digital services.

Contrary to the characterization of the Dearborn Petition, Comcast has not targeted PEG channels in Michigan (or anywhere else) for unfair treatment. In fact, before it proposed to digitize PEG channels in Michigan, Comcast already had converted non-PEG analog

programming to digital on its basic service tier in Michigan and elsewhere. Comcast never proposed to discontinue the inclusion of PEG channels on its basic service tier, or otherwise to disadvantage viewership of those channels. Instead, Comcast proposed to move PEG channels from random and scattered analog locations to a neighborhood of consecutive, and technically superior, digital PEG channels. To further solidify the identity of PEG programming as large numbers of our customers adopt digital viewing habits (*i.e.*, less “channel surfing”), PEG channels would be located in the same digital channel neighborhood on Comcast systems across the state.

Comcast’s PEG digitization proposal is entirely consistent with the Communications Act and Commission rules. Congress directed that there be only one basic service tier on a cable system, and defined that “service tier” solely in terms of the program channels delivered at a separate rate; nothing in the definition of the “basic service tier” either explicitly or implicitly limits the format in which the channels may be carried or what equipment is needed to view those channels. Inclusion of digitized PEG and non-PEG channels (including broadcast channels) in the basic service tier fully complies with statutory and Commission requirements.

Moreover, the Communications Act expressly acknowledges that “the equipment used to receive the basic service tier” might “includ[e] a converter box.” And the Commission’s implementing regulations establish separate rules governing basic service rates and basic equipment rates. This clear division between service rates and equipment rates, and the express statutory recognition that a converter box may be required for some customers to receive basic service, negate any conceivable inference that all channels in the basic service tier must be delivered in the same format and without the need for additional equipment.

Despite this clear legal framework, the Dearborn Petition advocates an unworkable definition of “service tier” that turns on whether a customer needs equipment to view PEG channels. In reality, there is no single type of consumer, and equipment needs vary from household to household. Over 70% of our customers already receive digital service, and therefore require no additional equipment to view digital PEG channels on the basic service tier. Some of the remaining customers have their own digital reception equipment (*e.g.*, digital televisions, TiVo recorders, etc.), and would likewise require no additional equipment to view digital PEG channels. Of the subset of remaining customers, some would need to obtain additional or different equipment from either Comcast or retail sources to view digital programming (including PEG) on the basic tier. Significantly, under the Dearborn Petitioners’ definition, if there is even *one* customer who continues to need equipment to view PEG channels, PEG channels are not being delivered on the basic service tier. This alone demonstrates why it is both impractical and inconsistent with the Communications Act to tie the definition of the basic service tier to the use of customer-premises equipment.

Although Section 623(b)(7) of the Communications Act does establish the minimum components of a rate-regulated basic service tier, it does not allow LFAs to control PEG digitization. The Dearborn Petition seeks to require the cable operator to ensure that PEG channels are “viewable” on all television sets connected to a cable system regardless of a customer’s choice of equipment. But Congress established a “viewability” requirement in Section 614 *only* for broadcasters – and there exists no comparable “viewability” right for PEG channels in either the Communications Act or its legislative history. Additionally, both the Communications Act and court precedent make clear that the Section 623(b)(7) minimum components provision is not even applicable when the basic service tier has been rate-

deregulated – as is the case in Michigan. Further, the Dearborn Petition’s request to limit digital delivery of PEG channels is precluded by Section 624(e) of the Communications Act, which specifically denies LFAs the ability to control or condition a cable operator’s choice of transmission technology or subscriber equipment.

Finally, the claims of the Dearborn Petitioners fundamentally conflict with Michigan’s 2007 video franchising law. That law changed many aspects of local government control over cable franchises, including franchise provisions mandating the location of PEG channels. Twenty other states have recently passed franchising reform laws, many of which specifically provide cable operators with greater flexibility as to the tier location and digital format of PEG channels. The Commission historically has treated state governments with comity and respect. Overriding their authority here – in the clear absence of express statutory authority – would be contrary to this practice, and to the federalism principles at the heart of Title VI of the Communications Act.

Comcast respectfully asks that the Commission (1) deny the Dearborn Petition to the extent it seeks to have Comcast’s proposed digitization of PEG channels deemed unlawful, and (2) respond to the seven specific questions presented by the Dearborn Petition in a manner consistent with these Comments.

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**COMMENTS OF COMCAST CORPORATION**

Comcast Corporation (“Comcast”)<sup>1</sup> hereby responds to the *Public Notice*<sup>2</sup> seeking comments regarding the captioned Petitions for Declaratory Ruling (“Petitions”), each of which raises various questions pertaining to cable’s delivery of Public, Educational, and Governmental (“PEG”) programming in a digital format. Comcast opposes the Petitions to the extent that they would constrain delivery of PEG programming in a digital format because such constraint would be inconsistent with the Communications Act, contrary to various state laws and local franchise agreements, and harmful to cable customers. Comcast takes no position, however, regarding the

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<sup>1</sup> Comcast files these comments on behalf of its operating subsidiaries, including those holding franchises with the plaintiff communities in *City of Dearborn et al. v. Comcast of Michigan III, Inc. et al.*, Case No. 08-10156 (E.D. Mich. filed Jan. 11, 2008).

<sup>2</sup> *Entities File Petitions for Declaratory Ruling regarding Public, Educational, and Governmental Programming*, Public Notice, MB Docket No. 09-13 (rel. Feb. 6, 2009).

Petitions that are specific to the technical quality and functionality of the PEG product included in AT&T's U-verse cable service.<sup>3</sup>

**I. DIGITIZATION OF PEG CHANNELS IS PART OF THE LARGER TRANSITION OF COMCAST'S SYSTEMS TO DIGITAL.**

Comcast has long supported PEG programming. Both in the provision of PEG channel capacity and in the funding of PEG expenses, Comcast has worked cooperatively with thousands of local governments and PEG programming providers to address the needs and interests of PEG providers, local franchising authorities ("LFAs"), our communities, and our customers. Comcast will continue that cooperative relationship as we address the compelling need to transition our systems to digital technology.

Although the Dearborn Petition<sup>4</sup> asks the Commission to answer specific questions framed by litigation pending in court between four LFAs and Comcast, those questions cannot be addressed without reference to the competitive forces that are causing all video providers to use (or plan to use) digital platforms. Comcast's plan to convert PEG channels to a digital format in Michigan is part of a comprehensive plan to migrate analog services to digital so that the reclaimed spectrum can be used in a more efficient fashion to provide not only PEG content, but also additional ethnic and international programming, video-on-demand options, HD channels, and faster Internet speeds.

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<sup>3</sup> Petitions filed by the Alliance for Community Media ("ACM") et al. (CSR-8126) and the City of Lansing (CSR-8127). Comcast refers to these Petitions individually as "ACM," "Lansing," and "Dearborn," as needed to clarify the context of these Comments.

<sup>4</sup> *Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc., et al.*, CSR-8128, MB Docket No. 09-13 (filed Dec. 9, 2008). The court in Michigan has stayed Comcast's PEG digitization plans in Michigan, so there is no risk of harm to the Dearborn petitioners and no urgency for agency action that would restrict full consideration of its implications.

The transition of Comcast's cable services from analog to digital is occurring in a highly competitive marketplace. Based on the latest Video Competition Report, as of June 2006, DBS providers served over 33% of all MVPD customers.<sup>5</sup> At the same time, Verizon's FiOS service and AT&T's U-verse are growing, and now are available to over 9 million<sup>6</sup> and 17 million<sup>7</sup> households, respectively. To attract and retain customers in competition with these all-digital competitors, Comcast faces a marketplace imperative to move from analog to digital transmission and free up bandwidth for new services that digital technology permits, that customers want, and that competition demands.<sup>8</sup>

Contrary to the suggestion of the Dearborn Petition that PEG channels must be delivered in the same format as broadcast channels, the programming and other services included in our service tiers are distinct from the transmission technologies used to deliver them. Some channels on a particular tier might be in analog format, while others might be in digital format, both standard definition and HD. Some programming might be delivered in linear fashion, while other programming might be provided in an "on-demand" basis. Still other programming might

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<sup>5</sup> *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd. 5412 ¶ 75 (2009); see also Thomas W. Eagan & Dorothy P. Tse, Oppenheimer & Co., *US Cable and Satellite: Regulatory Risk Worsens with FCC 70/70 Imposition 1* (Nov. 12, 2007) (filed with Comcast *ex parte* notice dated Dec. 14, 2007 in MM Docket No. 02-264).

<sup>6</sup> Verizon Communications, Inc., SEC Annual Report Form 10-K, filed February 24, 2009, for fiscal year ending December 31, 2008 at p. 10 ("FiOS TV . . . is available to more than 9 million homes across 14 states.").

<sup>7</sup> AT&T Inc., SEC Annual Report Form 10-K, filed February 25, 2009, for the fiscal year ending December 31, 2008 at p. 2 ("In December 2008, we added our millionth U-Verse video customer, ending the year with approximately 1,045,000 customers. As of December 31, 2008, we have passed approximately 17 million living units.").

<sup>8</sup> None of our competitors are required to carry PEG channels in analog format. Nor do all of our competitors share our history of investment (including cash and dedicated capacity) in PEG programming. The DBS providers have no community-based PEG requirements, although they have a separate public interest obligation to reserve 4% of their channel capacity for "noncommercial programming of an educational or informational nature." 47 C.F.R. § 25.701; see also *Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd. 23254 (1998).

be in HD format. The customer is purchasing all of these program services when he or she purchases the particular tier of service; he or she is not purchasing a specific transmission technology.

We wish to make clear that Comcast has not targeted PEG channels in Michigan or elsewhere for “discriminatory” treatment. Consistent with the Communications Act and the Commission’s rules, Comcast’s basic service tier includes both analog and digital channels, including HD channels. Comcast has also converted and delivered other programming channels in digital format *while keeping those services on its basic service tier*. In the City of Dearborn alone, Comcast already had 13 channels of digital programming available on the basic service tier prior to the planned PEG conversion. Simply put, converting channels to digital format, while keeping those channels on the basic service tier, is not unique to PEG programming. Moreover, Comcast sought to provide special assistance to its customers for the conversion of PEG channels to digital in Michigan by offering a free digital converter to analog-only homes for at least one year.

Although the LFAs in the Dearborn Petition opposed Comcast’s proposal for the digitization of PEG channels, the Commission should not assume that the Petitioners speak for all LFAs. Not all LFAs agree as to the need to have all PEG channels in analog format or even on the basic service tier. Not surprisingly, there are differences in LFA perspectives regarding the timing and nature of the transition of PEG channels to digital. Some LFAs are agnostic as to the manner of PEG carriage and impose no requirements for PEG channel locations, while others seek to maintain analog PEG channels until the system no longer carries any analog programming.

Within this context, Comcast turns to the specific arguments advanced by the Petitioners in the Dearborn Petition.

## **II. COMCAST'S PLAN FOR THE ORDERLY TRANSITION OF PEG CHANNELS TO DIGITAL IS FAIR, REASONABLE, AND IN THE PUBLIC INTEREST.**

The Dearborn Petition repeatedly describes Comcast's plan for converting PEG channels to digital format as "discriminatory," even though this characterization is insupportable as a matter of law and fact.<sup>9</sup> As discussed in detail in Sections III and V below, there are no PEG channel "nondiscrimination" provisions in Petitioners' franchise agreements nor do any exist in the Communications Act, or in Michigan statutory or common law. Moreover, the Petitioners are simply wrong as a matter of fact in suggesting that Comcast somehow proposed to treat PEG channels unfairly, or to undermine the public interest in PEG programming.

### **A. Before And After The Michigan Litigation, Comcast Has Converted Non-PEG Channels From Analog To Digital While Keeping Those Services On The Basic Service Tier.**

As the Commission is aware, Comcast (like most traditional cable operators) is engaged in an ongoing process of reducing the number of channels it delivers in analog format and dramatically increasing the number of channels it delivers in digital format. This entails far more than simply converting channels from analog to digital; it also involves substantial upgrades to the cable infrastructure and customer premises equipment. The investments Comcast is making in its digital migration are essential to ensure the most efficient use of its cable system bandwidth and to provide customers with substantial improvements in video service offerings as well as advanced services.

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<sup>9</sup> See, e.g., Dearborn Petition at 5, 10, 21, 22.

The dispute in Michigan arose not because Comcast set out to target PEG channels for unfair treatment, but because Comcast had already converted some non-PEG programming to digital and because PEG presented a set of channels that could logically be grouped together for digital conversion.<sup>10</sup> Prior to January 2008, when Comcast proposed to convert Michigan PEG channels to digital and locate them together on the cable system with “900” channel numbers in a “PEG neighborhood,” Comcast already delivered 13 non-PEG channels in a digital format to Dearborn customers who subscribed only to Comcast’s basic service tier. The same is true across the country, where Comcast has converted some non-PEG program services from analog to digital format while keeping those services in the basic service package.

The conversion of analog channels to digital format has required (or will require) little effort for the majority of Comcast’s customers, and will bring substantial benefits to virtually all of Comcast’s customers. Over 70% of Comcast’s customers already have digital service, and thus are able to see digital channels (including any PEG channels converted to digital) on TVs via digital set-top boxes.<sup>11</sup> Comcast-issued set-tops are not the only avenue of accessing digital signals. Customers also have a number of retail equipment options for accessing digital cable service.<sup>12</sup>

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<sup>10</sup> The Michigan legislature allowed for the digitization and repositioning of PEG channels on the cable system through its statewide video franchise legislation, which specifically declared that provisions of incumbent cable franchises other than those contained in the State’s new Uniform Video Services Local Franchise to be “unenforceable by the franchising entity.” M.C.L. § 484.3305(3). Thus, Comcast believes that, to the extent any of its Michigan cable franchises specify the carriage of PEG channels on particular channels, or otherwise restrict Comcast’s ability to convert PEG channels to digital format, they are preempted by the state franchising law. *See* Section IV herein.

<sup>11</sup> See Exhibit 1 hereto, Comcast Pro Forma Cable Customer Metrics, released with Comcast Fourth Quarter and Year End 2008 Results (noting that Comcast has already deployed over 27 million digital set-top boxes).

<sup>12</sup> For example, customers can purchase digital TVs with digital cable tuners (so-called QAM-enabled TVs) to access unencrypted basic channels, including digitized PEG channels, or they can purchase CableCARD-enabled TVs to access both encrypted and unencrypted channels, including basic channels and channels on other tiers of service. The Dearborn Petition suggests that customers with QAM-enabled TVs but no converter are not able to see

Comcast's plan to digitize PEG channels and position them in a PEG programming neighborhood was simply part of the ongoing process of converting analog programming to digital – a process in which the percentage of Comcast customers who have analog-only reception is rapidly diminishing. Simply stated, Comcast's migration of PEG channels to digital was consistent with its treatment of other channels and was not discriminatory.

**B. Comcast Took Reasonable Steps To Inform LFAs And Prepare Customers For PEG Digitization.**

Comcast *never* proposed to discontinue the inclusion of PEG channels in the basic service tier, or to hinder the viewership of PEG programming.<sup>13</sup> To the contrary, Comcast took numerous steps to communicate our plan to LFAs and to minimize any customer confusion about PEG digitization.

Comcast notified all Michigan LFAs 60 days in advance of its intention to convert PEG channels to digital and to create a uniform PEG channel neighborhood in the "900 range."<sup>14</sup> Comcast's Government Affairs representatives subsequently had further communications with LFA representatives and with representatives of the PEG programming community. Comcast's

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digitized PEG channels. Dearborn Petition at 19-22. To the contrary, Comcast's witness testified that such customers will receive digitized PEG channels, but that Comcast does not control the channel numbers on which manufacturers display digital channels. *See* Dearborn Petition at Ex. C (Transcript of Hearing on Pl.s' Motion for Prelim. Inj., Case No. 08-10156 (E.D. Mich. January 14, 2008) (herein "Hearing Tr." at 135:1-12.)).

<sup>13</sup> *See, e.g.*, Dearborn Petition at Ex. A (Compl. ¶ 41).

<sup>14</sup> *See e.g.*, Letter to Deborah Guthrie, Cable Coordinator, Meridian Township from John P. Gardner, Government Affairs Manager, Comcast, Michigan Region (November 15, 2007); Comcast Customer Notice to the Meridian Township; Letter to Bill Irving, Law Department, City of Dearborn from Federick Eaton, Government Affairs Manager, Comcast, Midwest Region (November 15, 2007); Comcast Customer Notice to City of Dearborn; Letter to Leslie Helwig, Cable Manager, Bloomfield Township from John P. Gardner, Government Affairs Manager, Comcast, Michigan Region (November 15, 2007); Comcast Customer Notice to Bloomfield Township; Letter to Mark Steenbergh, Mayor, City of Warren from Gerald W. Smith, Government Affairs Manager, Comcast, Michigan Region (November 15, 2007); Comcast Customer Notice to City of Warren, collectively attached hereto as Exhibit 2.

communications with these representatives made clear that its plan included an offer to provide analog-only households with at least one free digital converter for a year.<sup>15</sup>

Comcast also provided its customers with notice of the change in PEG channel format and location. In particular, Comcast created public service announcements specific to the PEG digitization and ran them on its Michigan cable systems over 30,000 times between November 2007 and January 11, 2008.<sup>16</sup> Comcast also sent written notice to all of its customers informing them of the proposed change in the delivery of PEG channels in Michigan.<sup>17</sup> The notice advised basic customers that they “can continue to receive PEG programming by acquiring a digital converter, digital service, or compatible equipment,” and invited them to call Comcast so that Comcast could “provide information on the easiest way for you to view these channels on your service.”<sup>18</sup> The notice also informed digital customers about the channel lineup changes.

These notifications were reasonable actions taken to educate consumers about our digitization plan and to inform them of their options to access PEG channels in Michigan.

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<sup>15</sup> See Letter to Susan McGillicuddy, Supervisor, Charter Township of Meridian from John P. Gardner, Government Affairs Manager, Comcast, Michigan Region (December 4, 2007); Letter to Caren Collins Fifer, President, Michigan NATOA from Juan Otero, Vice President, Government Affairs, Comcast (December 7, 2007); Letter to Susan McGillicuddy, Supervisor, Charter Township of Meridian from Juan Otero, Vice President, Government and Regulatory Affairs, Comcast, Michigan Region (January 8, 2008), collectively attached hereto as Exhibit 3.

<sup>16</sup> Hearing Tr. 143:17 – 144:4. January 11, 2008 is the date Dearborn Petitioners filed suit to stop the transition to digital carriage of the PEG channels. A transcript of one Comcast PSA is attached as Exhibit 4.

<sup>17</sup> For examples of customer notices sent to all of Comcast’s customers in Michigan, see Customer Notices to Dearborn, Meridian, Bloomfield, and Warren, attached hereto at Exhibit 2.

<sup>18</sup> Because of the variations in customer equipment, including different set-top boxes or other equipment provided by Comcast or third party suppliers, Comcast made the decision to speak with individuals to help them determine their options.

**C. Comcast's Plan To Digitize PEG Channels In Michigan Promotes The Public Interest And Helps PEG Programming Strengthen Its Identity.**

Comcast's proposal to place PEG channels in Michigan in a digital PEG neighborhood as part of the basic service tier promotes both the public interest and the interests of PEG programming.

The public interest benefits associated with the conversion of analog programming to digital are significant. The Commission itself recognized, in its *2005 Integration Ban Order*, the consumer benefits of "the Cable Industry's migration to all-digital networks."<sup>19</sup> The conversion of analog channels to digital allows Comcast (and other cable operators) to improve signal quality, increase the number of HD channels, and boost high-speed Internet speeds, among other things. Additionally, moving to digital makes cable systems more competitive with their primary competitors – DirecTV, Dish Network, AT&T, Verizon – each of which operates an all digital platform.

Comcast's plan in Michigan to convert PEG channels to digital, and to realign and group their channel positions, benefits PEG programmers and their audiences as well by improving their identity through carriage of consecutive PEG channels in a consistent "digital PEG neighborhood." Historically, PEG channels have been assigned analog slots on an *ad hoc* basis, with the result that PEG channels are typically scattered throughout a system's channel lineups. Consequently, their channel locations are inconsistent from system to system, and even from community to community in a particular system.

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<sup>19</sup> *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd. 6794 ¶ 37 (2005) ("2005 Integration Ban Order").

Comcast's proposal was intended to improve the public's awareness of PEG programming by locating each community's PEG channels in Michigan in a uniform, digital PEG programming neighborhood. Viewers across the state would find the PEG channels for their community together in the 900-925 range, along with other public interest programming delivered on a Comcast-operated channel offering local programming. This kind of PEG program neighborhood offered across Comcast's Michigan cable systems would be similar to the Commission's own nationwide grouping of non-commercial educational FM radio stations at the low end of the FM radio band (87.9 MHz to 91.9 MHz).<sup>20</sup> Just as the audience for National Public Radio and other non-commercial FM stations knows to look in that band for non-commercial programming, Comcast customers would come to know and expect that non-commercial video programming can be found in a specific channel range.

The PEG neighborhood would allow PEG programmers to engage in cooperative marketing efforts that are not practical with scattered channel placement. As detailed above, Comcast gave customers notice of the change in channel location and advertised the change heavily on its systems while also marketing PEG content. Viewers were informed, through Comcast's public service announcements ("PSAs") and announcements on the PEG channels themselves, of the new PEG channel locations. Comcast's PSAs, which ran at least 30,000 times on a wide variety of system channels, told viewers that they could find their PEG channels between channels 900 and 925, thereby helping to build a PEG channel neighborhood identity and raising public awareness of PEG channels generally.

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<sup>20</sup> See 47 C.F.R. § 73.501 (channels available for assignment to noncommercial educational licensees).

The Dearborn Petition suggests that PEG channels in those communities stand to lose viewers that now “channel surf” to find their programming.<sup>21</sup> In fact, channel surfing on a cable system across a wide variety of programming channels that have absolutely nothing in common is largely an artifact of analog technology, particularly as channel lineups expand to include HD and other digital channels. Customers increasingly use the interactive program guide to access particular programming “neighborhoods,” such as the children’s television neighborhood, and then surf programming in those neighborhoods. For example, many consumers who have invested in HDTVs tune directly to the HDTV channel neighborhood and bypass the analog channels entirely.

Comcast’s proposed grouping of PEG channels would make the PEG programming neighborhood easy to access and navigate. In any event, because the PEG channels would be grouped on channels between 900 and 925, they would be accessible immediately below the analog channels that begin at channel 2. Viewers who want to browse for PEG programming would simply press the “down” channel button from the first analog channel (channel 2), and they would be taken to the 900 series of channels. There they would find the PEG programming neighborhood, adjacent to the analog broadcast channels.

### **III. THE COMMUNICATIONS ACT AND COMMISSION RULES PERMIT THE DIGITIZATION OF PEG CHANNELS ON THE BASIC SERVICE TIER.**

The Communications Act does not support any of the relief requested by the Dearborn Petition. In fact, the Act allows the inclusion of both analog and digital services on the basic

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<sup>21</sup> Dearborn Petition at p. 4; Petition for Declaratory Ruling of the City of Lansing, (CSR-8127) (“Lansing Petition”), at 3, 15; Petition for Declaratory Ruling of Alliance for Community Media *et al.*, (CSR-8126) (“ACM Petition”) at 16-17.

service tier. It also prohibits LFAs from restricting a cable operator's use of digital technology and equipment to deliver PEG channels.

**A. The Basic Service Tier May Include Both Analog And Digital Services, And May Be Received Through An Array Of Subscriber Equipment.**

The Dearborn Petition presupposes that the basic service tier cannot include both analog and digital channels.<sup>22</sup> That view is contradicted by the plain language of the statute and Commission precedent. The Act defines a "service tier" as "a category of cable services or other services provided by a cable operator and for which a separate rate is charged by the cable operator."<sup>23</sup> Under Comcast's approach, the payment of the basic service tier rate entitles the consumer to access all of the channels that comprise the basic service tier, including digitized PEG and non-PEG channels that the operator makes part of that tier. It also bears emphasis that the Commission has concluded that "the plain language of . . . the Act contemplates the existence of only one basic tier"<sup>24</sup> and further determined that the basic tier includes *digital* broadcast signals.<sup>25</sup>

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<sup>22</sup> Dearborn Petition at 9-10.

<sup>23</sup> 47 U.S.C. § 522(17).

<sup>24</sup> *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, 8 FCC Rcd. 5631, 5744 ¶ 169 (1993) ("hereafter "Rate Regulation"); 47 C.F.R. § 76.901(a).

<sup>25</sup> *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd. 2598 ¶ 102 (2001) ("In the context of analog must carry, it has been the Commission's view that the Act contemplates there be one basic service tier. We believe that in the context of the new digital carriage requirements, it is consistent with the statutory language to require that a broadcaster's digital signal must be available on a basic tier such that all broadcast signals are available to all cable subscribers at the lowest priced tier of service, as Congress envisioned. The basic service tier, including any broadcast signals carried, will continue to be under the jurisdiction of the local franchising authority, and as such, will be rate regulated if the local franchising authority has been certified under Section 623 of the Act. We note, however, that if a cable system faces effective competition under one of the four statutory tests, and is deregulated pursuant to a Commission order, the cable operator is free to place a broadcaster's digital signal on upper tiers of service or on a separate digital service tier. This finding is based upon the belief that Section 623(b)(7) is one of those rate regulation requirements that sunsets once competition is present in a given franchise area. We believe that the decision in *Time Warner v. FCC* supports this interpretation.").

Petitioners' argument that both service and equipment must be evaluated together to define "basic service" also is without merit. As part of the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the Commission to establish rules for "basic service tier rate regulation."<sup>26</sup> At the same time, Congress required the Commission to establish rules regulating the rates for "the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit."<sup>27</sup> The Commission's implementing regulations, in fact, establish separate rules governing basic service rates and basic equipment rates,<sup>28</sup> and the permissible rates for service and equipment are established under separate rate forms. This clear division between service rates and equipment rates, and the express statutory recognition that a converter box may be required for some customers to receive basic service, negate any conceivable inference that all channels in the basic service tier must be delivered in the same format and without the need for additional equipment.

The Commission has "recognize[d] that the technology for cable equipment is rapidly changing and Congress did not intend to inhibit innovation."<sup>29</sup> Given this constant change in cable equipment, the Commission, in establishing equipment rate rules, explained that "customers who purchase equipment must accept the risk of a cable system upgrade that might make their equipment incompatible with the new cable system technology."<sup>30</sup> In other words, the customer's equipment might limit the ability to view certain programming on a given tier.

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<sup>26</sup> 47 U.S.C. § 543(b).

<sup>27</sup> *Id.* § 543(b)(3).

<sup>28</sup> 47 C.F.R. §§ 76.922 (service rates), 76.923 (equipment rates).

<sup>29</sup> *Rate Regulation*, 8 FCC Rcd. at 5806-07 ¶ 283 n. 671.

<sup>30</sup> *Rate Regulation*, 8 FCC Rcd. at 5917-18 ¶ 298.

Indeed, there may still be cable customers with older television sets that are unable to tune all of the analog signals offered as part of a basic service tier without using a set-top box. Surely the Commission would not hold that such analog channels are not part of the basic service; yet that would be the necessary result if Petitioners' legal interpretation regarding digital channels included within a basic service were to prevail.

Furthermore, there is no authority in the Communications Act or its legislative history for Petitioners' argument that, if a cable subscriber requires different or additional equipment to receive PEG channels, the channels are not part of the basic service tier.<sup>31</sup> According to the Petitioners, PEG channels must be delivered "without special actions by any particular subscriber."<sup>32</sup> This construction is contrary to the Act. Section 611 permits franchise authorities to require the designation of capacity for PEG channels in franchise agreements, but this does not convey any authority to dictate analog or digital delivery. In fact, Section 624(e) denies LFAs the power to control the cable operator's choice of transmission technology or subscriber equipment to deliver and receive PEG channels.<sup>33</sup> Section 623(b)(7) establishes the minimum components of a rate-regulated basic service tier, but it does not override Section 624(e) and bestow upon LFAs control over how a cable operator transmits PEG channels to subscribers.<sup>34</sup> In fact, the statute expressly prohibits LFAs from regulating equipment charges other than as provided by the Commission.<sup>35</sup> Moreover, as explained below, Section 614's "viewability"

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<sup>31</sup> Dearborn Petition at 19-21.

<sup>32</sup> *Id.*

<sup>33</sup> Compare 47 U.S.C. § 531(a)-(b) (PEG channel provisions) with 47 U.S.C. § 544(e) (prohibiting LFA conditions or restrictions on cable transmission technology and subscriber equipment).

<sup>34</sup> 47 U.S.C. § 543(b)(7).

<sup>35</sup> *Id.* § 543(b)(3).

mandate, which provides special rights to broadcast programming, does not encompass PEG programming.

**B. Congress Did Not Give PEG Channels “Parity” With Broadcast Television Signals In Legislation Governing Carriage on Cable Systems.**

Fundamentally, the Dearborn Petition seeks a determination that PEG channels are entitled as a matter of federal law to the same signal availability rights that Congress afforded to *broadcast* channels in Section 614 of the Act.<sup>36</sup> The basic flaw of that claim, however, is underscored by the very different treatment Congress gave to broadcast channels in Section 614 and PEG channels in Section 611.

Section 614 (governing cable carriage of commercial broadcast signals) was enacted at the same time, and in the same subpart of the Act, as Section 611 (governing cable carriage of PEG channels). In Section 614, Congress gave broadcast stations special rights to be carried on certain channels, and specifically required that broadcast signals be “viewable via cable on all television receivers of a subscriber which are connected to a cable system.”<sup>37</sup> The Commission has construed this provision as requiring cable operators to deliver broadcast signals in analog format if any other channels are carried in analog.<sup>38</sup> In Section 611, by contrast, Congress did not give PEG channels the right to be on any particular channel location, nor did it impose an obligation on cable operators to ensure that PEG channels are “viewable . . . on all television receivers which are connected to a cable system.” The statute does not permit the Commission

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<sup>36</sup> 47 U.S.C. § 534. Petitioners claim that PEG channels must be “as accessible” as broadcast channels (Dearborn Petition at 20), and invoked the same FCC “viewability” decision before the Michigan Court.

<sup>37</sup> 47 U.S.C. § 534(b)(6)-(7).

<sup>38</sup> *Carriage of Digital Television Broadcast Signals*, 22 FCC Rcd. 21064 at ¶¶ 15, 18, 22 (2007) (“Viewability Order”).

to elevate PEG channels to the status of broadcast channels, nor confer rights on them which Congress did not intend.

Congress chose a separate statutory mechanism to address the carriage requirements for PEG channels. As noted, pursuant to Section 623, cable operators that are subject to rate regulation are required to carry broadcast and PEG channels on the basic service tier – a tier which all cable customers must purchase, and for which federal law imposes “reasonable rates.”<sup>39</sup> Comcast’s proposal for digital PEG channel delivery satisfies Section 623(b)(7)’s requirements for the “minimum contents” of the basic service tier because all PEG channels remain part of the basic service tier.

Petitioners seek to import the additional “viewability” standard set forth in Section 614 – and as interpreted in the Viewability Order – to apply to PEG programming, but the Commission is not free to disregard the obvious differences between Sections 614 and 611 or export language from one section of the statute to another.

**C. Section 624(e) Of The Communications Act Does Not Allow Franchising Authorities To Interfere With The Use Of Digital Technology And Subscriber Equipment.**

Leaving aside the inapplicability of Section 614’s “viewability” standard to PEG channels, other provisions of the Communications Act demonstrate that Congress did not intend for LFAs to have the power to interfere with the orderly evolution of cable system technology and consumer equipment. Specifically, the Communications Act prohibits LFAs from controlling the equipment configuration in customers’ homes and the transmission technology employed by cable operators.

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<sup>39</sup> 47 U.S.C. § 543(b)(1).

Section 624(e) of the Act states that “[n]o State or franchising authority may prohibit, condition, or restrict a cable system’s use of any type of subscriber equipment or any transmission technology.”<sup>40</sup> Congress enacted this provision to avoid “the patchwork of regulations that would result from a locality-by-locality-approach,” which it thought to be “particularly inappropriate in today’s intensely dynamic technological environment.”<sup>41</sup> The Commission considered this legislative history of Section 624(e) and found that, at minimum, it means that “local franchising authorities may not control whether a cable operator uses digital or analog transmissions.”<sup>42</sup> Yet that is precisely what Petitioners are attempting to do in this case. In obtaining a preliminary injunction to enjoin the implementation of Comcast’s proposed digitization of PEG channels, Petitioners have thus far succeeded in an effort to “prohibit, condition, or restrict” Comcast’s use of both digital “transmission technology” to deliver PEG, and the “subscriber equipment” that some customers may use to receive those digital transmissions. Petitioners have never explained how their challenge to Comcast’s proposal can be reconciled with the plain terms of Section 624(e).<sup>43</sup>

#### **IV. PETITIONERS’ REQUESTED DECLARATORY RULINGS CONFLICT WITH STATES’ EFFORTS TO PROMOTE MVPD COMPETITION.**

Beyond its inconsistency with federal law, the Dearborn Petition also presents a broad challenge to a state’s sovereign power to regulate its political subdivisions. The Dearborn Petition is premised upon the assumption that the Petitioner LFAs can enforce PEG channel

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<sup>40</sup> 47 U.S.C. § 544(e).

<sup>41</sup> Communications Act of 1996, H. R. Rep. No. 104-204 at 110.

<sup>42</sup> *In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 5296, 5356 ¶ 141 (1999).

<sup>43</sup> The availability of retail equipment options to access digital channels further undermines the Dearborn Petitioners’ equipment arguments. Cable customers do not have to lease any equipment from the cable operator to view digitized PEG channels. Such leasing is entirely optional because the customer can secure necessary equipment from retail outlets.

franchise requirements that are in conflict with a state law enacted to promote MVPD competition. The Commission has encouraged states to take further steps to remove obstacles to competitive video entry,<sup>44</sup> and many states recently have enacted sweeping video competition laws. Specifically, 20 states, including Michigan, have enacted statewide franchising laws that limit (and sometimes eliminate) the power of *local* governments with respect to a host of cable television franchising matters.<sup>45</sup> At least 11 of these states have explicitly provided greater flexibility to new and incumbent cable operators as to the tier location and/or digital format of PEG channels.<sup>46</sup>

For example, in enacting the Florida Consumer Choice Act of 2007 (“CCA”),<sup>47</sup> the state of Florida decided that it is both lawful and in the public interest to transmit PEG channels in a

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<sup>44</sup> See *In re Implementation of 621(A)(1) of the Cable Communications Policy Act of 1984*, 22 FCC Rcd. 5101, 5109 ¶ 16 (2007) (“A few states and municipalities recently have recognized the need for reform and have established expedited franchising processes.”). In this Order, the Commission specifically applauded Michigan’s enactment of the Uniform Franchise Act, noting that “Michigan recently enacted legislation that streamlines the franchise application process, establishes a 30-day timeframe within which an LFA must make a decision, and eliminates build-out requirements.” *Id.*

<sup>45</sup> Digital Infrastructure and Video Competition Act of 2006, Cal. Pub. Util. Code §§ 5800-5970; Conn. Gen. Stat. §§ 16-1 and 16-331 *et seq.*; Consumer Choice Act of 2007, Fla. Stat. §§ 610.102 *et seq.*; Consumer Choice for Television Act of 2007, Ga. Code Ann. §§ 36-76; Cable and Video Competition Law of 2007, 220 Ill. Comp. Stat. §§ 5/21 & 5/70; Ind. Code § 8-1-34; Iowa Code § 477A; Video Competition Act of 2006, Kan. Stat. Ann. § 12-2021 *et seq.* & 17-1902 *et seq.*; Consumer Choice for Television Act, La. Rev. Stat. Ann. § 45:1361 *et seq.*; Uniform Video Services Local Franchise Act of 2006, Mich. Comp. Laws § 484.3301 *et seq.*; 2007 Video Services Providers Act, Mo. Rev. Stat. §§ 67.2677 – 67.2714; Nev. Rev. Stat. § 711 *et seq.*; N.J. Stat. § 48:5A-1 *et seq.*; N.C. Gen. Stat. § 66-350 *et seq.*; Or. Rev. Stat. § 1332 *et seq.*; South Carolina Competitive Cable Services Act, S.C. Code § 58-12-300 *et seq.*; Competitive Cable and Video Services Act, Tenn. Code Ann. § 7-59-301 *et seq.*; Tex. Util. Code § 66.001 *et seq.*; Va. Code § 15.2-2108 *et seq.*; Wis. Stat. § 66.0420.

<sup>46</sup> Ariz. Rev. Stat. § 9-506(D)(1); Fla. Stat. § 610.109(6); La. Rev. Stat. § 1369(B)(3); Mo. Rev. Stat. § 67.2703(1)-(3); Nev. Rev. Stat. § 711.800(1); Ohio Rev. Code § 1332.30(A), (B); Tenn. Code Ann. § 7-59-309(h); Tex. Util. Code § 66.009(d); Va. Code Ann. § 15.2-2108.19; W. Va. Code R. § 150-26-1, Form No. 2 (PSC Franchise Agreement § 4(f)); Wis. Stat. § 66.0420(5)(a)(3), (4). The Connecticut DPUC likewise issued a decision finding that the delivery of PEG channels in digital format is consistent with federal law. DPUC Decision, *Petition of the Attorney General’s Office to Request a Contested Proceeding Regarding Cablevision’s PEG Proposal*, Docket No. 08-08-50:UR:PAP (Nov. 12, 2008), available at <http://www.ct.gov/dpuc/site/default.asp> (last visited March 4, 2009.)

<sup>47</sup> Fla. Stat. Ann. § 610.102 *et seq.*

digital format.<sup>48</sup> While the CCA requires a statewide franchisee to continue providing the same *number* of PEG channels required under a preexisting local franchise,<sup>49</sup> the CCA expressly authorizes a cable operator to locate such PEG channels “on its lowest *digital* tier of service offered to the provider’s subscribers.”<sup>50</sup> Certain LFAs in Florida challenged this legislation, arguing that it violated federal law by removing PEG channels from the basic service tier.<sup>51</sup> The U.S. District Court for the Middle District of Florida rejected this argument, and found that the CCA specifically authorizes the digitization of PEG channels and clarified that LFAs have no power to require PEG channels to be delivered through an analog signal.<sup>52</sup> The court found arguments that the CCA is preempted by federal law unconvincing,<sup>53</sup> and further concluded that a cable system that is exempt from rate regulation under Section 623 of the Communications Act<sup>54</sup> is not required to include PEG channels as a minimum component of the system’s basic service tier under that same section.<sup>55</sup>

Like Florida, Michigan passed legislation that similarly limits LFA control over PEG channels and cleared the way for Comcast to convert PEG channels to a digital format and

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<sup>48</sup> The CCA authorizes a cable operator to apply for a statewide franchise, after which any franchise issued by an LFA is terminated. At that time, any term or condition contained in the preexisting local franchise that exceeds the obligations established by the statewide franchise is considered “against public policy” and rendered “void.” Fla. Stat. Ann. § 610.105(1) (stating that applications for state-wide franchises would be accepted after July 1, 2007).

<sup>49</sup> Fla. Stat. Ann. § 610.109(2).

<sup>50</sup> Fla. Stat. Ann. § 610.109(6) (emphasis added).

<sup>51</sup> *City of St. Petersburg v. Bright House Networks, LLC*, Nos. 8:07-cv-01205-T-24-MSS, 8:07-cv-01206-T-23-TBM, 2008 WL 5231861 (M.D. Fla. Dec. 12, 2008) (“*City of St. Petersburg*”).

<sup>52</sup> *City of St. Petersburg*, 2008 WL 5231861 at \* 4-5.

<sup>53</sup> *Id.*

<sup>54</sup> 47 U.S.C. § 543.

<sup>55</sup> *City of St. Petersburg*, 2008 WL 5231861 at \* 3-4.

relocate their channel assignments.<sup>56</sup> The Act makes clear that, as of its effective date, “any provisions of an existing franchise that are inconsistent with or in addition to the provisions of a uniform video service local franchise agreement are unreasonable and unenforceable by the franchising entity.”<sup>57</sup> If a cable operator chose not to terminate an existing franchise agreement, it was authorized to “continue under the existing franchise agreement amended to include *only those provisions required under a uniform video service local franchise*.”<sup>58</sup> Section 4 of the Uniform Franchise Act comprehensively addresses a cable operator’s PEG carriage obligations in fourteen subsections, *none* of which contain any requirements concerning PEG channel placement, delivery format, or the process for changing PEG channel locations.<sup>59</sup> Instead, as with Florida’s new legislation, Michigan’s Uniform Franchise Act requires only that a cable operator retain the same *number* of PEG channels required by a preexisting local franchise.<sup>60</sup> None of the Uniform Franchise Act provisions authorize the Michigan LFAs to control PEG channel locations or the transmission technology used to deliver the PEG channels.

When Comcast acted on the State’s directive that all incumbent franchises were “amended to include only those provisions required under” a uniform franchise, the Dearborn Petitioners filed suit, effectively challenging Michigan’s preemption of franchise provisions governing PEG channel location. Comcast argued to the court that the provisions in the Michigan LFAs’ franchises that purport to govern PEG channel locations are unenforceable

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<sup>56</sup> The legislature passed the Michigan Uniform Video Services Local Franchise Act (“Uniform Franchise Act”), effective January 1, 2007, “to promote competition in providing video services in this State” by creating a uniform franchise agreement for both new entrants and incumbents.” Public Act 480 of 2006, Michigan Compiled Law (M.C.L.) § 484.3301 *et seq.*

<sup>57</sup> M.C.L. § 484.3305(3).

<sup>58</sup> M.C.L. § 484.3305(2)(a)-(b) (emphasis added).

<sup>59</sup> M.C.L. § 484.3304.

<sup>60</sup> M.C.L. § 484.3304(1).

under the plain language of the state law.<sup>61</sup> The court disagreed, and ruled that Section 611 of the Communications Act (which recognizes the ability of franchising authorities to enforce PEG access commitments) preempts Michigan's Uniform Franchise Act to the extent the Michigan Act purports to limit the ability of Michigan LFAs to enforce franchise requirements for PEG channel placement or location.<sup>62</sup> Comcast believes that this aspect of the court's decision is in direct conflict with Supreme Court precedent, and that it will be reversed.<sup>63</sup>

For purposes of this proceeding, however, the Commission should recognize that the underlying dispute in Michigan goes to the heart of a state's power to control its local governments.<sup>64</sup> Preempting state franchising laws in this proceeding would be inconsistent with

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<sup>61</sup> See Dearborn Petition at Ex. D (Comcast Mot. to Dismiss, Case No. 08-10156, (D.E. 19) (E.D. Mich. filed April 30, 2008). The franchise of the City of Dearborn requires that PEG channel locations "be determined by mutual agreement," (Petition, Ex. A at ¶ 26), and the City of Warren's franchise requires that Comcast carry certain PEG programming specific cable channels. *City of Warren v. Comcast of Warren*, Case No. 08 -10156 (Compl. ("Warren Compl.") ¶ 26-28.) The franchises of the Charter Township of Meridian and the Charter Township of Bloomfield neither designate specific PEG channel locations nor limitations on moving them.

<sup>62</sup> *City of Dearborn v. Comcast of Michigan III, Inc.*, No. 08-10156, 2008 WL 4534167, \* 6 (E.D. Mich. Oct. 3, 2008), amended by, No. 08-10156, 2008 WL 5000039 (E.D. Mich. Nov 25, 2008).

<sup>63</sup> Comcast argued that Section 611 does not provide the required "plain statement" of Congressional intent to disrupt the power of States to control the activities of their subordinate agencies and local governments. See, e.g., *Gregory v. Ashcroft*, 501 U.S. 452 (1991) (rejecting a claim that federal law preempted mandatory requirement under Missouri law for State judges because "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'") (internal citations omitted); *Nixon v. Missouri Municipal League*, 541 U.S. 125, 140 (2004) (rejecting claim that 47 U.S.C. § 253 provided a "plain statement" of Congressional intent to preempt State control of local government power to provide telecommunications, and stating that "federal legislation threatening to trench on the State's arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power"). Instead, Congress explained that "Subsection 611(b) does not give the franchising authority the power to override the application of State law," and required that "any rules and procedures established by a franchising authority for the use of [PEG] channel capacity on an institutional network must be consistent with rules established by state regulatory agencies and applicable state laws." H.R. Rep. No. 98-934, at 46 (1984), reprinted at 1984 U.S.C.C.A.N. 4655, 4683. Finally, Congress stated that it did not "intend Title VI to upset the traditional relationship between State and local governments, under which a local government is a political subdivision of the State and derives its authority from the State." *Id.* at 40, 1984 U.S.C.C.A.N. at 4731.

<sup>64</sup> See *In re Implementation of 621(A)(1) of the Cable Communications Policy Act of 1984*, 22 FCC Rcd. 5101, 5109 ¶ 16 (2007) ("A few states and municipalities recently have recognized the need for reform and have established expedited franchising processes"); *id.* at 5168 n. 258 ("Nothing in our discussion here is intended to preempt the actions of any states.").

longstanding Commission practice. Where the Commission has exercised preemption authority in other contexts, it has been very careful to tread lightly on state authority over local jurisdictions.<sup>65</sup> In short, the Commission has historically treated state governments with comity and respect. Overriding the states' authority here – in the clear absence of express statutory authority – would be contrary to this practice, and to the federalism principles at the heart of Title VI of the Communications Act.

## V. ANSWERS TO SPECIFIC QUESTIONS POSED TO THE COMMISSION.

The Dearborn Petition forwards to the Commission seven specific questions asked by the court in the Michigan litigation. The following responds to those questions.

*Question 1: Does it constitute an "evasion" of applicable rate regulations (or any other regulation) when cable operators: (a) require some subscribers to purchase/ lease converter boxes to view public, educational and governmental channels ("PEG channels"); and (b) provide PEG channels in digital format on the basic-service tier while non-PEG channels on the basic-service tier are provided in analog format? (See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation, 8 FCC Rcd 5631, 5915-5917 (F.C.C. 1993): We define a prohibited evasion as any practice or action which avoids the rate regulation provisions of the Act or our rules contrary to the intent of the Act or its underlying policies. We also believe that . . . (1) implicit rate increases; (2) a significant decline in customer service without a similar decline in price; and (3) deceptive practices such as improper cost shifting or intentionally misstating revenues [are evasions].*

Comcast's Response: As the Dearborn Petition correctly notes, this "question directly implicates 47 U.S.C. § 543(h), which required the FCC to adopt regulations prohibiting evasions of any 'requirements of *this section*.'"<sup>66</sup> Section 623, however, is entitled "Regulation of Rates" and only applies to cable systems subject to rate regulation.<sup>67</sup> It is self-evident that one cannot "evade" rate regulation if one is not, in the first instance, subject to rate regulation. As noted

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<sup>65</sup> *Id.*

<sup>66</sup> Dearborn Petition at 9 (emphasis added).

<sup>67</sup> See generally 47 U.S.C. § 543.

above, Michigan's Uniform Video Services Local Franchise Act provides that "a franchising entity shall not . . . impose any other [preempted] franchise requirement than is allowed under this act. For purposes of this subsection, a franchise requirement includes, but is not limited to, a provision regulating rates charged by video service providers."<sup>68</sup> Accordingly, there can be no evasion of federal cable rate regulation in Michigan because the State of Michigan has ended rate regulation by its subdivisions.

Even if Comcast's basic service rates were still regulated in Michigan, Comcast's proposal for the digitization of PEG channels in Michigan would not constitute an evasion. In developing standards and guidelines "to prevent evasions, including evasions that result from retiering,"<sup>69</sup> the Commission concluded that its rate regulations, as a whole, would prevent evasions on an ongoing basis and that it would consider challenges to specific practices on a case-by-case basis.<sup>70</sup> The Commission observed that, in defending a challenged practice, a cable operator could demonstrate that the challenged practice was "primarily for a legitimate business purpose and not simply to evade rate regulation."<sup>71</sup> Under these standards, Comcast's proposed digitization of PEG channels in Michigan would clearly not be an evasion of rate regulation.

Comcast proposed to convert its Michigan PEG channels to digital for an entirely legitimate purpose – it is a critical step in the continuing evolution of its cable systems to digital technology. The purpose of the digitization was to make more efficient use of Comcast's cable system bandwidth in order to provide its customers with improved video and broadband services.

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<sup>68</sup> M.C.L. § 484.3303(8).

<sup>69</sup> *Id.* § 543(h).

<sup>70</sup> The Commission explained that "[t]he rules we are adopting . . . are all intended, consistent with the mandate of Section 623(h), to address potential evasions, including those that might result from retiering of services." *Rate Regulation*, 8 FCC Rcd. at 5915 ¶ 451.

<sup>71</sup> *Rate Regulation*, 8 FCC Rcd. at 5915-16 ¶ 452.

There is no evidence whatsoever that Comcast proposed digitizing PEG channels to evade rate regulation.<sup>72</sup>

The conversion of PEG channels to digital, while keeping them on the basic service tier, is entirely consistent with the rate regulation provisions of the Communications Act, and the Commission's rules. Both the Act and the Commission's rules require a cable operator to have rates for services that are separate from its rates for the equipment used to receive the basic service.<sup>73</sup> The premise of this rule is that not all consumers have the same television equipment and that not all consumers will require the same (if any) additional equipment to receive the basic service programming. Thus, there is no violation of the Act or the Commission's rules if the conversion of analog PEG signals to digital requires some customers to obtain digital equipment, just as there is no violation of the rate regulation provisions of the Act in delivering HD-broadcast channels in HD, which, of course, cannot be received by non-HD TVs.<sup>74</sup> Petitioners do not provide any support for their novel assertion that the exact same equipment must be required to view every channel on a particular service tier.

The Dearborn Petition claims that Comcast's transition of PEG channels to digital constitutes an "implicit rate increase" and, therefore, an evasion of the rate regulation provisions

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<sup>72</sup> Additionally, to the extent rate regulation applies, the digitized PEG channels would remain subject to rate regulation both as to the rate for the limited basic tier and as to the rates for equipment needed to receive that tier. Thus, the digitization in no way "evades" rate regulation.

<sup>73</sup> 47 U.S.C. § 543(b)(1)(rates for basic service tier), 543(b)(3)(rates for equipment used to receive the basic service tier); 47 C.F.R. § 76.923(b)(requiring separate rates for service and equipment).

<sup>74</sup> The Dearborn Petition erroneously cites two Bureau rate decisions to argue that "charging subscribers for equipment that is for Comcast's benefit . . . may be treated as an evasion . . ." Dearborn Petition at 11 (citing *TCI Cablevision of Oregon, Inc.*, 14 FCC Rcd. 17685 (1999); *Comcast of Dallas, L.P.* 20 FCC Rcd. 5892 (2005)). The two decisions, however, have nothing to do with alleged evasions, and in no way suggest that the Commission might disregard the requirement of separate rates for services and customer premises equipment.

of 47 U.S.C. § 543.<sup>75</sup> Although the Commission has explained that an “implicit rate increase” might constitute an evasion – for example, where there was “a decrease in the number of programming services offered . . . without a decrease in rates”<sup>76</sup> – Comcast’s conversion of Michigan PEG channels does not constitute an implicit service rate increase. As a preliminary matter, the vast majority of customers, who already have digital service or digital equipment, would see no additional charge of any kind. For those customers who might need some form of digital tuner or converter, some percentage might take the opportunity to purchase devices at retail that can access digital channels without an operator-supplied set-top box; there could be no implicit rate increase for these customers because Comcast would receive no additional revenue at all. For those analog-only customers who do not elect to acquire digital equipment through the retail market, Comcast proposes to provide a *free* digital converter for each household for at least one year.<sup>77</sup> All of these facts mitigate any potential consumer impact of Comcast’s evolution to digital delivery. The truth, however, is that there is no violation of statute or rule in Comcast’s digital evolution or the associated equipment requirements that evolution ultimately might impose on cable customers.

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<sup>75</sup> Dearborn Petition at 11.

<sup>76</sup> *Rate Regulation*, 8 FCC Rcd. at 5917 ¶ 455.

<sup>77</sup> Petitioners’ claim that customers will eventually have to either incur additional charges to view the PEG programming or pay for channels that cannot be viewed is purely conjectural. By statute, cable operators must have separate rates for basic cable services and rates for converters and other equipment, and in those systems still subject to rate regulation, the statute and the Commission’s rules allow franchise authorities to regulate the rates for both the basic service and any associated equipment. As noted above, however, the rates for service and equipment used to receive the basic service are separate and distinct. Even in the case of broadcast channels, the Act expressly acknowledges that customers may have to obtain equipment to view the basic service tier and that if they choose to obtain that equipment from their cable operator, the cable operator may charge for that equipment. 47 U.S.C. § 534(b)(7).

Because Comcast's proposed digitization of Michigan PEG channels rests on a legitimate purpose wholly unrelated to avoidance of rate regulation, and because rate regulation of cable has been abolished in Michigan, it is not an evasion of rate regulation.

*Question 2: Does the requirement to provide PEG channels on the basic-service tier apply to all cable operators or are cable operators in communities where rates are subject to "effective competition" (or otherwise deregulated) excluded from this requirement? (See Pl. Response Br. p. 19 n.16 "Comcast has argued that the requirement to provide PEG [channels] on [the] basic service tier does not apply in communities where rates are subject to effective competition. Plaintiffs disagree"; see also H.R. Rep. No. 102-628 at 85 (1992) (PEG channels must be "available to all community members on a nondiscriminatory basis"))).*

Comcast's Response: In communities where rates for the basic service tier are no longer subject to rate regulation (as is the case throughout all of Michigan), regulations related to cable operators' rates are inoperative.<sup>78</sup> Despite Petitioners' claims to the contrary, the requirement to carry PEG channels on the basic tier that is found in 47 U.S.C. § 543(b)(7) is a rate regulation provision. First, as noted above, 47 U.S.C. § 543 is generally titled "REGULATION OF RATES." More specifically, the relevant provision at issue, 47 U.S.C. § 543(b)(7), is titled "Components of Basic Tier Subject to Regulation." Accordingly, based on the plain language of the statute, this provision applies only to a "basic tier subject to regulation," and not to any basic service tier that is unregulated. The Commission recognized this when it first implemented this provision, stating that "*in the regulated environment*, the basic tier is to be composed of the broadcast and access channels specified in the statute and such other services that the cable operator may choose to provide."<sup>79</sup>

As the Dearborn Petitioners noted, the U.S. Court of Appeals for the D.C. Circuit considered the "minimum components" requirement of the statute and concluded that it "clearly

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<sup>78</sup> See *Time Warner Entm't Co. v. Federal Communications Commission*, 56 F.3d 151, 192 (D.C. Cir. 1995).

<sup>79</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, First Order on Reconsideration*, 9 FCC Rcd 1164, 1208-09 ¶ 86 (1993) (emphasis added).

applies only to systems not subject to effective competition.”<sup>80</sup> Contrary to the argument of those Petitioners, the court fully considered the text of Section 623(b)(7) and found Congress clearly expressed its intent that this section applies only to regulated services:

That Section 543(b)(7) applies only to regulated systems is made clear by Section 543(b)(7)(B), which provides that any additional, optional service placed upon the basic service tier “shall be provided to subscribers at rates determined under the regulations” enacted by the FCC. Because this provision . . . clearly states an intention directly to regulate rates, *it cannot apply to systems that face effective competition.*<sup>81</sup>

The court’s conclusion that the “minimum components” requirement of Section 543(b)(7) “applies only to regulated systems” was central to its determination that the “tier buy-through” provision in Section 623(b)(8) likewise applied only to systems with regulated rates. The Commission is bound by this holding, and has in fact adopted it.<sup>82</sup> Moreover, as explained above, the additional “viewability” requirement set forth in Section 614 of the Act and applicable to broadcast carriage has no relevance to PEG carriage. The inclusion of PEG channels on the basic service tier is found only in Section 623(b), and that Section is clearly and inextricably linked to rate regulation.

*Question 3: Does the Court look from the consumer’s point-of-view to determine whether: (a) a programming service is part of the basic-service tier; and (b) the proposed digitization of PEG channels but not other channels is “discriminatory” (because e.g., some customers may be required to obtain additional equipment or make special requests for additional equipment to view PEG channels)? (See H.R. Rep. No. 102-628 at 85 (1992)(PEG channels must be “available to all community members on a nondiscriminatory basis”)*

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<sup>80</sup> See *Time Warner Entm’t Co.*, 56 F.3d at 192.

<sup>81</sup> *Id.* (emphasis added).

<sup>82</sup> See *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd. 2598, 2643 ¶ 102 (2001) (expressing the Commission’s “belief that Section 623(b)(7) is one of those rate regulation requirements that sunsets once competition is present in a given franchise area. We believe that the decision in *Time Warner v. FCC* supports this interpretation.”). Recently, a federal district court reached the same conclusion in *City of St. Petersburg*, 2008 WL 5231861, \* 3-4 (N.D. Fla. Dec. 12, 2008). The same analysis applies to similar arguments presented in the Lansing Petition and the ACM Petition.

Comcast's Response: The Communications Act very specifically prescribes whether a particular programming service is part of the basic tier. The statute has only one definition of a "service tier," which "means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator."<sup>83</sup> There is nothing subjective in the definition.

The notion of determining whether digital programming is part of the basic service tier "from the consumer's point of view" is not only contrary to law but also unworkable because there is no single "consumer's point of view" – consumers will differ in the way they receive and view their basic cable service. It is safe to say, however, that if one were to look to what the majority of consumers would think, we know that 70% of them (who already have digital service) would not have any reason to believe that the digitized PEG channels were not a part of the basic service tier. On any given cable system, there will be some additional percentage of basic-only customers with digital television sets who also will be unaffected, and there will be still others indifferent to the change because they do not watch PEG programming or are willing to make the switch to digital. The Dearborn Petition, of course, focuses on a final subset of analog-only basic customers. However, if each of these classes of consumers' perspectives is "the benchmark" for whether the digitization of PEG channels removes them from the basic service tier, the Commission would need to recognize more than one basic service tier for each system; that would contravene Congress's explicit requirement that there be just one such tier.

The Commission should affirm that there is only one basic tier of cable service, which is defined solely by the definition provided in the Communications Act and by the Commission's

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<sup>83</sup> 47 U.S.C. § 522(17).

rules, and is not altered by the type of consumer electronic equipment a subscriber might have or need.<sup>84</sup>

With respect to subsection (b) of Question 3, the question incorporates Petitioners' mistaken assumption that there exists in federal law a "nondiscrimination" clause that is applicable to the transmission of PEG channels. The premise of an overbroad, amorphous nondiscrimination requirement governing cable operator provision of PEG channels, however, cannot be reconciled with either the text of the Act or the legislative history on which it rests.

The Act itself contains neither such "nondiscrimination" language nor any other hint of such a requirement. The legislative history quoted in Question 3 is a description of *the history* of PEG channels before the 1992 Act amendments, which added the "minimum components of the basic tier" requirement of 47 U.S.C. §543(b)(7). The House Report to the 1992 Cable Television Consumer Protection Act states:

PEG programming is delivered on channels set aside for community use in many cable systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge.<sup>85</sup>

This legislative history simply describes the general status of PEG channel carriage prior to 1992, and does not purport to describe any requirement to be imposed by the statute.

In any event, the use of "nondiscriminatory" in the quoted passage of legislative history describes the Commission's requirement in the 1970s that each cable system have "at least one specially designated, noncommercial public access channel available on a first-come,

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<sup>84</sup> The same analysis supports Comcast's opposition to arguments, presented by both the Lansing Petition and the ACM Petition, asking the Commission to resolve the legal questions "from the subscriber's point of view." Dearborn Petition at 19; Lansing Petition at 11; ACM Petition at 20.

<sup>85</sup> H.R. Rep. No 102-628 at 85. In fact, the same passage of the House Report cited in proposed Question 3 leaves no doubt that what Congress intended in the new legislation was only that PEG channels be "available to all subscribers on the basic tier at the lowest reasonable rate."

nondiscriminatory basis.”<sup>86</sup> The Commission was clear that it was concerned with *who was able to transmit PEG programming over the cable system*. In other words, “nondiscrimination” in the context of PEG programming had nothing to do with the particular manner of carriage over the cable system.<sup>87</sup>

*Question 4: What [are] the criteria for a channel to be considered part of the basic-service tier? If cable operators require customers to purchase/lease digital receiving equipment to view PEG channels, are those channels per se a separate “service tier” within the meaning of 47 U.S.C. § 522(17)?*

Comcast’s Response: As detailed in our responses to the first three questions, the Communications Act and the Commission’s rules establish that the only criterion for defining whether a channel is part of the basic service tier is whether the channel is included in the package of services available at the rate charged for basic service on rate-regulated systems. Congress established a requirement that each cable system have a single basic service tier. In implementing Section 623, the Commission rejected arguments that would have allowed operators to use other criteria to define and offer more than one basic tier. The fact that different television sets might have, or might require, different kinds of consumer equipment to see all of the services delivered as part of the basic service tier does not affect the definition of the basic service tier.

*Question 5: Are cable operators precluded from charging for equipment used in connection with the reception of PEG channels on the basic-service tier when equipment is not needed to receive non-PEG channels on the basic-service tier?*

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<sup>86</sup> See *Cable Television Report and Order*, 36 F.C.C. 2d 143, 240-241 (1972) (former FCC rule § 76.251(a)(4)) (quoted in text); former rule § 76.251 (a)(11)(operating rules for public access channel require “first-come nondiscriminatory access.”).

<sup>87</sup> There is likewise no merit to ACM’s suggestion that the Commission’s technical standards for cable channels somehow encompass a broad PEG nondiscrimination rule. See ACM Petition at 25 -27. Nor does the statutory limit on cable operators’ editorial control of PEG channel *content* establish requirements for cable transmission of PEG programming. 47 U.S.C. § 531(e). See ACM Petition at 30.

Comcast's Response: Comcast submits that cable operators are not precluded from charging for equipment used in connection with the reception of PEG channels on the basic service tier under any circumstances, so long as the charges comply with applicable law. Of course, Comcast's transition to digital delivery of services is being implemented in a fiercely competitive marketplace that requires us to consider carefully any additional costs or inconvenience for our customers lest they turn to our all-digital competitors.

The suggestion in the second half of this question that "equipment is not needed to receive non-PEG channels on the basic service tier" is inaccurate. The equipment needs for viewing programming – both PEG and non-PEG programming – vary from home to home, and even from television set to television set. In Michigan, Comcast already delivers several non-PEG channels in digital format on the basic tier of service, as well as some analog channels. Thus, to the extent Comcast's conversion of PEG channels to digital format would require any given customer to obtain new equipment (from Comcast or at retail), that effect is not unique to PEG channels.

As explained above, Petitioners offer no legal support for their remarkable proposition regarding service tiers and associated equipment. The Commission has long recognized that *some* cable customers may need additional equipment to view *some* cable programming included within a particular service tier, and it has never suggested (outside of the "viewability" ruling applicable to broadcast stations) that this situation violates any statute or rule. 47 U.S.C. § 544(e) directs that "[n]o State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology." To the extent that the Dearborn Petitioners seek to condition Comcast's use of digital transmission technology and converters for PEG channels on the claimed requirement to treat PEG channels the same as

commercial broadcast television stations, that request should be rejected because it imposes a condition on Comcast's delivery of PEG channels in a manner that violates the letter and intent of Section 624(e).

*Question 6: Can PEG channels be digitized, require special equipment to be accessed (or be subject to other burdens with respect to the need to make a special request to receive equipment and the placement of channels), and still be considered carried on the basic-service tier when non-PEG channels on the basic-service tier are not digitized and do not require special equipment to be accessed?*

Comcast's Response: As explained above, PEG channels may be delivered in digital format and still be considered part of the basic service tier, just as other cable channels that are digitized are part of the basic service tier, even if some customers must obtain digital equipment to view the channels. Comcast notes again that it already provides other non-PEG channels in digital format on the basic service tier.

As for the question's statement that digitization might subject PEG channels "to other burdens with respect to the need to make a special request to receive equipment and the placement of channels," it is beyond dispute the equipment needs of consumers vary from household to household and from television set to television set. The majority of Comcast's customers already have digital service. For households that have no digital equipment, or a mix of digital equipment and analog equipment, there is a retail market in which they may obtain digital tuners or converters, or they can choose to obtain them from Comcast. But Comcast does not know, and cannot predict, the exact electronics configurations and needs for all television sets connected to its cable systems. The ultimate equipment needs of individual households or television sets within a household do not define whether channels are part of the basic service.

There are, in fact, households with older television sets that are unable to view all of the analog signals offered as part of the cable system's basic service tier – unless they use a set-top

box. The Commission surely would agree that the analog channels potentially subject to this viewability limitation are part of the basic service tier. Yet under Petitioners' legal arguments, they would not be considered part of the basic service.

*Question 7: Is digitization of PEG channels "discriminatory" because some customers may be required to make a special request to obtain additional equipment to view the channels, while customers are not required to obtain additional equipment to view non-PEG channels?*

Comcast's Response: As detailed above, it is permissible to digitize PEG channels and provide them as part of the basic service tier even if the digital conversion requires some customers to obtain digital equipment from Comcast or another source. To the extent this question presupposes that Comcast would have only PEG channels in digital format on its basic tier, that assumption is incorrect. But even if only PEG channels were provided in digital format on the basic tier, Comcast submits that federal law permits the mixing of digital and analog signals on the basic service tier, as explained in detail above.

This question again presupposes the existence of some broad "nondiscrimination" requirement requiring cable systems to transmit PEG channels exactly as commercial broadcast channels are transmitted. As detailed above, this premise is mistaken; there was never any nondiscrimination requirement applied to the manner in which cable operators transmitted PEG channels over the cable system.

## VI. CONCLUSION

For the foregoing reasons, Comcast respectfully submits that its proposal for the digitization of PEG channels in Michigan is consistent with both the public interest in PEG programming and the law, and requests that the Commission answer the questions posed in the Dearborn Petition as suggested in these Comments.

Respectfully submitted,

/s/ Wesley R. Heppler

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March 9, 2009

## CERTIFICATE OF SERVICE

I, Nichele S. Rice, do hereby certify on this 9th day of March, 2009 that a true and correct copy of the foregoing Comments of Comcast Corporation has been sent via U.S. mail, postage prepaid to the following:

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*/s/ Nichele S. Rice*

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

The below-signed signatory has read the foregoing Comments, and, to the best of my 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.

3/9/09  
Date

Wesley R. Haggler

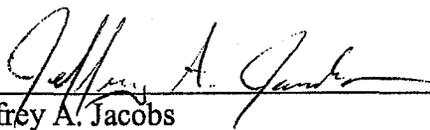
**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.**

In the Matter of	)	
	)	
Petition for Declaratory Ruling Regarding Primary	)	MB Docket No. 09-13
Jurisdiction Referral in <i>City of Dearborn et al. v.</i>	)	
<i>Comcast of Michigan III, Inc. et al.</i>	)	CSR-8128
	)	
Petition for Declaratory Ruling of the City of	)	CSR-8127
Lansing Michigan	)	
	)	
Petition for Declaratory Ruling of The Alliance	)	CSR-8126
For Community Media, <i>et al.</i>	)	

**DECLARATION OF JEFFREY A. JACOBS**

I, Jeffrey A. Jacobs, declare as follows:

I am Assistant General Counsel for Comcast Cable Communications. I have read the foregoing "Comments of Comcast Corporation" in MB Docket No. 09-13 and verify that, to the best of my knowledge, information and belief formed after reasonable inquiry, the factual statements contained therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Jeffrey A. Jacobs

Executed on March 9, 2009

## EXHIBIT LIST

- Exhibit 1** Comcast Pro Forma Cable Customer Metrics
- Exhibit 2** Letters to Petitioners and Accompanying Customer Notices
- Exhibit 3** Correspondence with Charter Township of Meridian and the Michigan Chapter of NATOA
- Exhibit 4** Comcast PSA Transcript

# **EXHIBIT 1**

**(Comcast Pro Forma Cable Customer Metrics)**

## Pro Forma Cable Customer Metrics

(Customers and boxes in thousands, except per customer data; unaudited)



	2007					2008				
	1Q	2Q	3Q	4Q	FY	1Q	2Q	3Q	4Q	FY
Homes Passed <sup>1</sup>	48,977	49,232	49,457	49,701	49,701	49,902	50,096	50,329	50,575	50,575
<b>Total Video</b>										
Total Video Customers	25,015	24,914	24,858	24,758	24,758	24,701	24,563	24,415	24,182	24,182
Total Video Penetration of Homes Passed <sup>2</sup>	51.1%	50.6%	50.3%	49.8%	49.8%	49.5%	49.0%	48.5%	47.8%	47.8%
Total Video Net Additions (Losses)	83	(101)	(56)	(100)	(174)	(57)	(138)	(148)	(233)	(575)
Digital Video Customers	13,671	14,494	14,997	15,527	15,527	16,021	16,341	16,758	17,004	17,004
Digital Penetration of Total Video	54.7%	58.2%	60.3%	62.7%	62.7%	64.9%	66.5%	68.6%	70.3%	70.3%
Digital Video Additions	658	823	503	530	2,514	494	320	417	247	1,478
Digital Set-Top Boxes	21,128	23,192	24,124	24,964	24,964	25,863	26,352	27,068	27,544	27,544
Boxes per Digital Customer	1.5	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
Advanced Services Customers <sup>3</sup>	5,199	5,648	5,986	6,458	6,458	6,909	6,982	7,293	7,725	7,725
Advanced Services Penetration of Total Video	20.8%	22.7%	24.1%	26.1%	26.1%	28.0%	28.4%	29.9%	31.9%	31.9%
Advanced Services Penetration of Digital Video	38.0%	39.0%	39.9%	41.6%	41.6%	43.1%	42.7%	43.5%	45.4%	45.4%
<b>High-Speed Internet (HSI)</b>										
HSI Customers	12,439	12,778	13,252	13,593	13,593	14,085	14,364	14,745	14,929	14,929
HSI "Available" Homes <sup>4</sup>	48,503	48,767	49,081	49,327	49,327	49,548	49,745	49,982	50,283	50,283
HSI Penetration of "Available" Homes <sup>2</sup>	25.6%	26.2%	27.0%	27.6%	27.6%	28.4%	28.9%	29.5%	29.7%	29.7%
HSI Net Additions	586	339	474	341	1,740	492	279	382	184	1,336
<b>Voice</b>										
Comcast Digital Voice (CDV) Customers	2,459	3,150	3,831	4,449	4,449	5,088	5,643	6,127	6,470	6,470
Circuit-Switched Voice Customers	560	443	304	176	176	66	10	7	3	3
Total Voice Customers	3,018	3,593	4,135	4,625	4,625	5,154	5,654	6,133	6,473	6,473
CDV "Available" Homes <sup>4</sup>	36,069	38,873	41,395	43,032	43,032	44,082	45,143	46,083	46,687	46,687
CDV Penetration of "Available" Homes <sup>2</sup>	6.8%	8.1%	9.3%	10.3%	10.3%	11.5%	12.5%	13.3%	13.9%	13.9%
CDV Net Additions	587	692	681	618	2,577	639	555	483	344	2,021
Combined Video, HSI and Voice Customers	40,472	41,284	42,244	42,976	42,976	43,940	44,580	45,294	45,584	45,584
Combined Video, HSI and Voice Net Additions	1,163	812	960	732	3,667	964	640	714	290	2,609
Total Revenue Generating Units (includes Digital Video Customers) <sup>5</sup>	54,142	55,778	57,241	58,502	58,502	59,961	60,921	62,051	62,588	62,588
RGU Net Adds	1,821	1,636	1,462	1,262	6,181	1,459	960	1,131	537	4,086
Average Monthly Revenue per Video Customer	\$96.27	\$100.90	\$101.70	\$104.25	\$101.03	\$106.70	\$109.61	\$110.67	\$113.80	\$110.48

See notes on page 4. Minor differences may exist due to rounding.

# Pro Forma Revenue and Pro Forma Expenses

(\$ in millions; unaudited)



	2007					2008				
	1Q	2Q	3Q	4Q	FY	1Q	2Q	3Q	4Q	FY
<b>Revenue</b>										
Video <sup>6</sup>	\$4,491	\$4,597	\$4,519	\$4,578	\$18,185	\$4,706	\$4,726	\$4,681	\$4,736	\$18,849
High-Speed Internet	\$1,569	\$1,632	\$1,666	\$1,703	\$6,570	\$1,750	\$1,792	\$1,822	\$1,861	\$7,225
Voice	\$356	\$425	\$479	\$533	\$1,793	\$587	\$640	\$690	\$732	\$2,649
Advertising	\$322	\$410	\$417	\$429	\$1,578	\$344	\$399	\$374	\$409	\$1,526
Other <sup>7</sup>	\$268	\$281	\$299	\$299	\$1,147	\$305	\$316	\$336	\$326	\$1,283
Franchise Fees	\$206	\$212	\$213	\$216	\$847	\$224	\$227	\$228	\$232	\$911
<b>Total Cable Segment *</b>	<b>\$7,212</b>	<b>\$7,557</b>	<b>\$7,593</b>	<b>\$7,758</b>	<b>\$30,120</b>	<b>\$7,916</b>	<b>\$8,100</b>	<b>\$8,131</b>	<b>\$8,296</b>	<b>\$32,443</b>
Advertising	\$125	\$157	\$156	\$139	\$577	\$154	\$170	\$146	\$143	\$613
Affiliate	\$148	\$145	\$139	\$165	\$597	\$156	\$155	\$158	\$163	\$632
Other <sup>8</sup>	\$29	\$32	\$35	\$44	\$140	\$53	\$41	\$43	\$44	\$181
<b>Total Programming Segment</b>	<b>\$302</b>	<b>\$334</b>	<b>\$330</b>	<b>\$348</b>	<b>\$1,314</b>	<b>\$363</b>	<b>\$366</b>	<b>\$347</b>	<b>\$350</b>	<b>\$1,426</b>
Corporate & Other	\$88	\$48	\$51	\$89	\$276	\$110	\$87	\$71	\$119	\$387
<b>Total Consolidated Revenue</b>	<b>\$7,602</b>	<b>\$7,939</b>	<b>\$7,974</b>	<b>\$8,195</b>	<b>\$31,710</b>	<b>\$8,389</b>	<b>\$8,553</b>	<b>\$8,549</b>	<b>\$8,765</b>	<b>\$34,256</b>
<b>Operating Expense</b>										
Video Programming	\$1,495	\$1,507	\$1,455	\$1,530	\$5,987	\$1,619	\$1,611	\$1,617	\$1,632	\$6,479
High-Speed Internet	\$142	\$148	\$148	\$148	\$586	\$138	\$136	\$131	\$118	\$523
Voice	\$168	\$158	\$191	\$180	\$697	\$200	\$182	\$179	\$169	\$730
Technical Labor	\$469	\$475	\$512	\$479	\$1,935	\$523	\$516	\$559	\$540	\$2,138
Other (Includes Franchise Fees)	\$613	\$622	\$639	\$664	\$2,538	\$683	\$696	\$696	\$719	\$2,794
<b>Total Cable Operating Expense<sup>9</sup></b>	<b>\$2,887</b>	<b>\$2,910</b>	<b>\$2,945</b>	<b>\$3,001</b>	<b>\$11,743</b>	<b>\$3,163</b>	<b>\$3,141</b>	<b>\$3,182</b>	<b>\$3,178</b>	<b>\$12,664</b>
Customer Service	\$417	\$426	\$445	\$420	\$1,708	\$442	\$434	\$443	\$454	\$1,773
Marketing	\$322	\$365	\$387	\$358	\$1,432	\$399	\$411	\$426	\$389	\$1,625
Administrative and Other <sup>10</sup>	\$710	\$732	\$766	\$783	\$2,991	\$770	\$752	\$829	\$860	\$3,211
<b>Total Cable SG&amp;A</b>	<b>\$1,449</b>	<b>\$1,523</b>	<b>\$1,598</b>	<b>\$1,561</b>	<b>\$6,131</b>	<b>\$1,611</b>	<b>\$1,597</b>	<b>\$1,698</b>	<b>\$1,703</b>	<b>\$6,609</b>
<b>Total Cable Segment</b>	<b>\$4,336</b>	<b>\$4,433</b>	<b>\$4,543</b>	<b>\$4,562</b>	<b>\$17,874</b>	<b>\$4,774</b>	<b>\$4,738</b>	<b>\$4,880</b>	<b>\$4,881</b>	<b>\$19,273</b>
<b>Total Programming Segment</b>	<b>\$237</b>	<b>\$259</b>	<b>\$233</b>	<b>\$299</b>	<b>\$1,028</b>	<b>\$250</b>	<b>\$277</b>	<b>\$242</b>	<b>\$295</b>	<b>\$1,064</b>
Corporate and Other	\$184	\$141	\$194	\$180	\$699	\$191	\$187	\$190	\$219	\$787
<b>Total Consolidated Operating Expense</b>	<b>\$4,757</b>	<b>\$4,833</b>	<b>\$4,970</b>	<b>\$5,041</b>	<b>\$19,601</b>	<b>\$5,215</b>	<b>\$5,202</b>	<b>\$5,312</b>	<b>\$5,395</b>	<b>\$21,124</b>
<b>Operating Cash Flow (OCF)<sup>11</sup></b>										
Cable	\$2,876	\$3,124	\$3,050	\$3,196	\$12,246	\$3,142	\$3,362	\$3,251	\$3,415	\$13,170
Programming	\$65	\$75	\$97	\$49	\$286	\$113	\$89	\$105	\$55	\$362
Corporate & Other	(\$96)	(\$93)	(\$143)	(\$91)	(\$423)	(\$81)	(\$100)	(\$119)	(\$100)	(\$400)
<b>Total Consolidated OCF</b>	<b>\$2,845</b>	<b>\$3,106</b>	<b>\$3,004</b>	<b>\$3,154</b>	<b>\$12,109</b>	<b>\$3,174</b>	<b>\$3,351</b>	<b>\$3,237</b>	<b>\$3,370</b>	<b>\$13,132</b>
Cable	39.9%	41.3%	40.2%	41.2%	40.7%	39.7%	41.5%	40.0%	41.2%	40.6%
Programming	21.3%	22.7%	29.3%	14.3%	21.8%	31.2%	24.2%	30.3%	15.7%	25.4%
<b>Total Consolidated OCF Margin</b>	<b>37.4%</b>	<b>39.1%</b>	<b>37.7%</b>	<b>38.5%</b>	<b>38.2%</b>	<b>37.8%</b>	<b>39.2%</b>	<b>37.9%</b>	<b>38.5%</b>	<b>38.3%</b>
* Business Services Revenue (included in Cable service revenues)	\$87	\$95	\$102	\$110	\$394	\$120	\$131	\$145	\$162	\$558

See notes on page 4. Minor differences may exist due to rounding.

## Pro Forma Capital Expenditures and Free Cash Flow

(\$ and shares in millions, except per share data; unaudited)



	2007					2008				
	1Q	2Q	3Q	4Q	FY	1Q	2Q	3Q	4Q	FY
<b>Capital Expenditures</b>										
Growth Capital										
Customer Premise Equipment (CPE)	\$751	\$804	\$701	\$660	\$2,916	\$819	\$687	\$590	\$775	\$2,871
Scalable Infrastructure	\$109	\$113	\$98	\$91	\$411	\$59	\$55	\$61	\$80	\$255
Line Extensions	\$88	\$100	\$99	\$78	\$365	\$48	\$52	\$54	\$58	\$212
Support Capital	\$70	\$110	\$99	\$89	\$368	\$54	\$57	\$65	\$102	\$278
Upgrades (Capacity Expansion)	\$22	\$27	\$28	\$42	\$119	\$21	\$25	\$13	\$8	\$67
Business Services	\$17	\$21	\$22	\$50	\$110	\$50	\$48	\$61	\$72	\$231
Total Growth Capital	\$1,057	\$1,175	\$1,047	\$1,010	\$4,289	\$1,051	\$924	\$844	\$1,095	\$3,914
Maintenance Capital										
CPE	\$66	\$77	\$84	\$77	\$304	\$58	\$73	\$76	\$69	\$276
Scalable Infrastructure	\$175	\$151	\$140	\$172	\$638	\$103	\$115	\$194	\$269	\$681
Support Capital	\$63	\$99	\$99	\$69	\$330	\$43	\$58	\$54	\$72	\$227
Upgrades	\$109	\$90	\$129	\$138	\$466	\$60	\$58	\$81	\$141	\$340
Total Maintenance Capital	\$413	\$417	\$452	\$456	\$1,738	\$264	\$304	\$405	\$551	\$1,524
Strategic/Discretionary Capital	\$10	\$23	\$29	\$27	\$89	\$40	\$26	\$19	\$22	\$107
Total Cable Segment <sup>12</sup>	\$1,480	\$1,615	\$1,528	\$1,493	\$6,116	\$1,355	\$1,254	\$1,268	\$1,668	\$5,545
Total Programming Segment	\$4	\$10	\$8	\$13	\$35	\$4	\$6	\$12	\$22	\$44
Corporate and Other	\$7	\$8	\$26	\$89	\$130	\$72	\$40	\$26	\$23	\$161
<b>Total Consolidated Capital Expenditures</b>	<b>\$1,491</b>	<b>\$1,633</b>	<b>\$1,562</b>	<b>\$1,595</b>	<b>\$6,281</b>	<b>\$1,431</b>	<b>\$1,300</b>	<b>\$1,306</b>	<b>\$1,713</b>	<b>\$5,750</b>
Percent of Total Consolidated Revenue	19.6%	20.6%	19.6%	19.5%	19.8%	17.1%	15.2%	15.3%	19.5%	16.8%
<b>Free Cash Flow<sup>13</sup></b>										
Net Cash Provided by Operating Activities	\$1,965	\$1,942	\$1,598	\$2,684	\$8,189	\$2,259	\$2,669	\$2,445	\$2,858	\$10,231
Capital Expenditures	(\$1,454)	(\$1,604)	(\$1,526)	(\$1,574)	(\$6,158)	(\$1,431)	(\$1,300)	(\$1,306)	(\$1,713)	(\$5,750)
Cash Paid for Capitalized Software	(\$88)	(\$86)	(\$60)	(\$77)	(\$311)	(\$99)	(\$88)	(\$100)	(\$123)	(\$410)
Cash Paid for Other Intangible Assets	(\$30)	(\$25)	(\$24)	(\$16)	(\$95)	(\$27)	(\$31)	(\$31)	(\$28)	(\$117)
Adjustments for Payment of Tax on Nonoperating Items <sup>14</sup>	\$49	\$141	\$536	(\$9)	\$717	\$0	\$228	\$88	(\$13)	\$303
Free Cash Flow (Including 2008 Economic Stimulus Package)	\$442	\$368	\$524	\$1,008	\$2,342	\$702	\$1,478	\$1,096	\$981	\$4,257
2008 Economic Stimulus Package *	\$0	\$0	\$0	\$0	\$0	\$0	(\$315)	(\$168)	(\$117)	(\$600)
Free Cash Flow	\$442	\$368	\$524	\$1,008	\$2,342	\$702	\$1,163	\$928	\$864	\$3,657
<b>Free Cash Flow per Share</b>	<b>\$0.14</b>	<b>\$0.12</b>	<b>\$0.17</b>	<b>\$0.33</b>	<b>\$0.75</b>	<b>\$0.23</b>	<b>\$0.39</b>	<b>\$0.32</b>	<b>\$0.30</b>	<b>\$1.24</b>
Diluted weighted-average number of common shares	3,161	3,147	3,118	3,078	3,129	3,017	2,970	2,920	2,888	2,952

\*Our definition of Free Cash Flow remains unchanged and specifically excludes any impact from the 2008 Economic Stimulus package. These amounts have been excluded from Free Cash Flow to provide an appropriate comparison.

Basis of Presentation:

All data, except Free Cash Flow, is presented on a pro forma basis. Pro forma data is adjusted only for timing of acquisitions or dispositions and does not include adjustments for costs related to integration activities, cost savings or synergies that have been or may be achieved by the combined businesses. Pro forma financial data includes the results of Comcast SportsNet Bay Area and Comcast SportsNet New England acquired on June 30, 2007, the cable system acquired from Patriot Media Holdings, LLC on August 31, 2007, and the cable systems resulting from the dissolution of the Insight Midwest Partnership on January 1, 2008. Pro forma results are presented as if the acquisitions and dispositions were effective on January 1, 2007. The net impact of these transactions was an increase of 765,000 video customers. Pro forma customer data also includes 7,000 video customers acquired through an acquisition on November 21, 2008. The impact of this acquisition on our segment operating results was not material. Please refer to our earnings release for a reconciliation of pro forma financial data.

All percentages are calculated on whole numbers.

Notes:

- 1) Homes are considered passed ("homes passed") if we can connect them to our distribution system without further extending the transmission lines. In the case of certain multiple dwelling units ("MDUs"), such as apartment buildings and condominium complexes, homes passed are counted on an adjusted basis. Homes passed are an estimate based on the best available information. Homes passed and "available" homes do not include the number of small and medium sized businesses passed which cannot be reasonably estimated at this time.
- 2) Penetration is calculated by dividing the number of customers by the number of homes passed or available homes, as appropriate. The number of customers includes our small and medium-sized business customers.
- 3) Advanced Services Customers subscribe to DVR and/or HDTV services.
- 4) Homes are considered available ("available" homes) if we can connect them to our distribution system without further upgrading the transmission lines and if we offer the service in that area.
- 5) Revenue Generating Units (RGUs) represents the sum of video and digital video, high-speed Internet and net voice customers, excluding additional outlets. Subscriptions to DVR and/or HDTV services do not result in additional RGUs.
- 6) Cable Video Revenue consists of our limited analog, expanded analog service, digital, premium, pay-per-view and equipment services.
- 7) Other Cable Revenue includes regional sports programming networks, residential video installation revenue, guide revenue, commissions from electronic retailing networks, other product offerings and revenue of our digital media center.
- 8) Other Programming Revenue primarily consists of international and Internet revenue.
- 9) Total Cable Operating Expense consists of video programming expense, technical labor costs, high-speed Internet and voice expense and other operating expense.  
Video Programming Expense, our largest operating expense, is the fees we pay to programming networks to license the programming we package, offer and distribute to our video customers.  
High-speed Internet Expense and Voice Expense include certain direct costs identified by us for providing these services. Other related costs associated with providing these services are generally shared among all our cable services and are not allocated to these captions.  
  
Technical Labor Costs include the internal and external labor to complete service call and installation activities in the home, network operations, fulfillment and provisioning costs.  
Other Operating Expense includes franchise fees, pole rentals, plant maintenance and vehicle-related costs, including fuel, as well as expenses related to our regional sports networks.
- 10) Cable Administrative and Other Expense consists of administrative personnel expense, bad debt expense, building and office expense, billing costs, insurance expense, property taxes, and severance costs of approximately \$39 million in 3Q08, \$63 million in 4Q08, and \$126 million for the full year 2008 related to staff reductions and a divisional reorganization.
- 11) See Exhibit 99.2, Explanation of Non-GAAP and Other Financial Measures, to Comcast's Form 8-K (Quarterly Earnings Release), for the definition of Operating Cash Flow.
- 12) Management evaluates Cable capital expenditures by categorizing investments into three groups: Growth, Maintenance and Strategic/Discretionary. Growth is directly tied to revenue generation and represents the costs required to secure new customers, revenue units or additional bandwidth revenues. Maintenance includes investments that allow the company to maintain its competitive position and provide a foundation for growth. Strategic/Discretionary includes investments that lay the groundwork for future products and services, such as our investments in interactive advertising, cross-platform product development or switched digital video.  
  
CPE includes costs incurred at the customer residence to secure new customers, revenue units and additional bandwidth revenues (e.g. digital converters).  
Scalable infrastructures includes costs, not CPE or network related to secure growth of new customers, revenue units and additional bandwidth revenues or provide service enhancements (e.g. headend equipment).  
Line extensions include network costs associated with entering new service areas (e.g. fiber/coaxial cable).  
Support capital includes costs associated with the replacement or enhancement of non-network assets due to obsolescence and wear out (e.g. non-network equipment, land, buildings and vehicles).  
Upgrades include costs to enhance or replace existing fiber/coaxial cable networks, including network improvements.  
Business Services includes fiber/coax extension, electronics, CPE and costs to secure new customers.  
To be consistent with our current management reporting presentation, certain capital expenditures within the cable segment have been reclassified.
- 13) Free Cash Flow is not presented on a pro forma basis. See Exhibit 99.2, Explanation of Non-GAAP and Other Financial Measures, to Comcast's Form 8-K (Quarterly Earnings Release), for the definition of Free Cash Flow.
- 14) Payment of Tax on Nonoperating Items in 3Q07 includes \$320 million payment of tax on prior year audits, \$160 million payment of tax on nonoperating items and \$56 million payment of tax related to acquired companies.

# **EXHIBIT 2**

**(Letters to Petitioners and Accompanying Customer Notices)**



November 15, 2007

Bill Irving  
Law Department  
City of Dearborn  
13615 Michigan Avenue  
Dearborn, MI 48126

Dear Mr. Irving:

At Comcast, we are committed to making public, education and government (PEG) programming readily available to all of our customers. By January 15, 2008, Comcast will deliver PEG programming in a high quality digital format and place these channels in consecutive channel positions largely uniform across the state. Customers will be notified of these channel changes beginning November 15, 2007 by a bill insert, a copy of which is enclosed, reflecting the transition of the current PEG channel to its new channel position.

Comcast will continue to offer PEG channels on our basic tier; however, we will deliver these channels in a digital format. Comcast is offering a special promotion of a free converter box to analog customers. Customers who use CableCard or have a QAM TV set will not need the additional digital converter box to receive these channels.

To support these efforts and reinforce the importance of this programming, Comcast plans to partner with our communities in a public service announcement (PSA) campaign that will create awareness of the value of community programming and inform customers of the new channel locations. Comcast will simultaneously consolidate existing Comcast-created Local Origination (LO) channels to a single digital LO channel, bolstering the image and value of the Comcast Community Network statewide.

Comcast recognizes the investments communities have made in their PEG programming offering, so in addition to the PSA campaign, Comcast will provide conversion at no cost and continue to maintain existing free transmission lines of PEG channels. Comcast will continue to partner with communities to ensure there is a smooth transition.

If you have any questions, please feel free to call me at 734-254-1888.

Sincerely,

A handwritten signature in cursive script that reads "Frederick G. Eaton".

Frederick G. Eaton  
Government Affairs Manager  
Comcast, Midwest Region  
41112 Concept Drive  
Plymouth, MI 48170

At Comcast, we are committed to offering superior community programming to our subscribers. Therefore we are pleased to announce that Comcast is now able to provide public, education and government (PEG) programming in a high-quality digital format on consistent channels in uniform locations statewide.

**To deliver these benefits to you, all PEG programming will be transitioned to a digital format by January 15, 2008.**

**Basic Cable Customers:**

*As noted above, the PEG channels will be delivered digitally on the Basic service level for all subscribers by January 15, 2008. Current Basic and Preferred Basic customers can continue to receive PEG programming by acquiring a digital converter, digital service or compatible equipment. For more information on how to continue receiving PEG programming, call 1-877-824-2984. We'll provide information on the easiest way for you to view these channels on your service.*

**Digital Cable Customers:**

*At the bottom of this letter, you will find a list of channel changes that will be effective January 15, 2008. These channels will provide convenient access to local information of interest.*

**Stay Connected to Community Programming:**

In addition to the benefit of viewing PEG programming in digital-quality, customers will enjoy greater viewing flexibility. For example, customers enjoying the advantages of a Comcast Digital Video Recorder (DVR) will be able to record PEG programming so they never miss a city council meeting, school program or community event.

If you have any questions about the upcoming channel changes, please feel free to call 1-877-824-2984.

Channel Name	Current Channel	New Channel (by Jan. 15)
Comcast Television	25	900
Dearborn Educational Access	19	902
Educational Access	24	903
CDTV	12	911
Public Ethnic Access	15	916
Public Access	18	917
Dearborn Public Access	16	918

Certain services are available separately or as a part of other levels of service. A converter/remote control is required to receive Digital Cable. Fees apply to DVR subscription. Services are subject to the terms and conditions of applicable Comcast subscriber agreements. Call Comcast for service details and restrictions. © Comcast Cable Communications, LLC. All rights reserved.

C608





November 15, 2007

Deborah Guthrie, Cable Coordinator  
Meridian Township  
5151 Marsh Road  
Okemos, MI 48864

Dear Ms. Guthrie:

At Comcast, we are committed to making public, education and government (PEG) programming readily available to all of our customers. By January 15, 2008, Comcast will deliver PEG programming in a high quality digital format and place these channels in consecutive channel positions largely uniform across the state. Customers will be notified of these channel changes beginning November 15, 2007 by a bill insert, a copy of which is enclosed, reflecting the transition of the current PEG channel to its new channel position.

Comcast will continue to offer PEG channels on our basic tier; however, we will deliver these channels in a digital format. Comcast is offering a special promotion of a free converter box to analog customers. Customers who use CableCard or have a QAM TV set will not need the additional digital converter box to receive these channels.

To support these efforts and reinforce the importance of this programming, Comcast plans to partner with our communities in a public service announcement (PSA) campaign that will create awareness of the value of community programming and inform customers of the new channel locations. Comcast will simultaneously consolidate existing Comcast-created Local Origination (LO) channels to a single digital LO channel, bolstering the image and value of the Comcast Community Network statewide.

Comcast recognizes the investments communities have made in their PEG programming offering, so in addition to the PSA campaign, Comcast will provide conversion at no cost and continue to maintain existing free transmission lines of PEG channels. Comcast will continue to partner with communities to ensure there is a smooth transition.

If you have any questions, please feel free to call me at 517-333-6028.

Sincerely,

John P. Gardner  
Government Affairs Manager  
Comcast, Michigan Region  
1070 Trowbridge Road  
East Lansing, MI 48823

At Comcast, we are committed to offering superior community programming to our subscribers. Therefore we are pleased to announce that Comcast is now able to provide public, education and government (PEG) programming in a high-quality digital format on consistent channels in uniform locations statewide.

**To deliver these benefits to you, all PEG programming will be transitioned to a digital format by January 15, 2008.**

**Basic Cable Customers:**

*As noted above, the PEG channels will be delivered digitally on the Basic service level for all subscribers by January 15, 2008. Current Basic and Preferred Basic customers can continue to receive PEG programming by acquiring a digital converter, digital service or compatible equipment. For more information on how to continue receiving PEG programming, call 1-877-824-2984. We'll provide information on the easiest way for you to view these channels on your service.*

**Digital Cable Customers:**

*At the bottom of this letter, you will find a list of channel changes that will be effective January 15, 2008. These channels will provide convenient access to local information of interest.*

**Stay Connected to Community Programming:**

In addition to the benefit of viewing PEG programming in digital-quality, customers will enjoy greater viewing flexibility. For example, customers enjoying the advantages of a Comcast Digital Video Recorder (DVR) will be able to record PEG programming so they never miss a city council meeting, school program or community event.

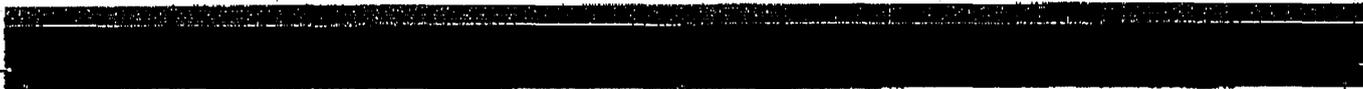
If you have any questions about the upcoming channel changes, please feel free to call 1-877-824-2984.

Channel Name	Current Channel	New Channel (by Jan. 15)
East Lansing Educational Access	24	902
Educational Access	27	903
Educational Access	28	904
Educational Access	29	905
Educational Access	31	906
Government Access HOM TV	21	911
E. Lansing Govt. Access/Educ. Access Haslett*	22	912
E. Lansing Govt. Access/Educ. Access Okemos*	23	913
Public Access	30	916

\*Meridian Township

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C579



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10/25/07 1:04:52 PM



November 15, 2007

Leslie Helwig, Cable Manager  
Bloomfield Township  
4200 Telegraph Road, P.O. Box 489  
Bloomfield Hills, MI 48303-0489

Dear Ms. Helwig:

At Comcast, we are committed to making public, education and government (PEG) programming readily available to all of our customers. By January 15, 2008, Comcast will deliver PEG programming in a high quality digital format and place these channels in consecutive channel positions largely uniform across the state. Customers will be notified of these channel changes beginning November 15, 2007 by a bill insert, a copy of which is enclosed, reflecting the transition of the current PEG channel to its new channel position.

Comcast will continue to offer PEG channels on our basic tier; however, we will deliver these channels in a digital format. Comcast is offering a special promotion of a free converter box to analog customers. Customers who use CableCard or have a QAM TV set will not need the additional digital converter box to receive these channels.

To support these efforts and reinforce the importance of this programming, Comcast plans to partner with our communities in a public service announcement (PSA) campaign that will create awareness of the value of community programming and inform customers of the new channel locations. Comcast will simultaneously consolidate existing Comcast-created Local Origination (LO) channels to a single digital LO channel, bolstering the image and value of the Comcast Community Network statewide.

Comcast recognizes the investments communities have made in their PEG programming offering, so in addition to the PSA campaign, Comcast will provide conversion at no cost and continue to maintain existing free transmission lines of PEG channels. Comcast will continue to partner with communities to ensure there is a smooth transition.

If you have any questions, please feel free to call me at 517-333-6028.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Gardner".

John P. Gardner  
Government Affairs Manager  
Comcast, Michigan Region  
1070 Trowbridge Rd.  
East Lansing, MI 48823

At Comcast, we are committed to offering superior community programming to our subscribers. Therefore we are pleased to announce that Comcast is now able to provide public, education and government (PEG) programming in a high-quality digital format on consistent channels in uniform locations statewide.

**To deliver these benefits to you, all PEG programming will be transitioned to a digital format by January 15, 2008.**

**Basic Cable Customers:**

*As noted above, the PEG channels will be delivered digitally on the Basic service level for all subscribers by January 15, 2008. Current Basic and Preferred Basic customers can continue to receive PEG programming by acquiring a digital converter, digital service or compatible equipment. For more information on how to continue receiving PEG programming, call 1-877-824-2984. We'll provide information on the easiest way for you to view these channels on your service.*

**Digital Cable Customers:**

*At the bottom of this letter, you will find a list of channel changes that will be effective January 15, 2008. These channels will provide convenient access to local information of interest.*

**Stay Connected to Community Programming:**

In addition to the benefit of viewing PEG programming in digital-quality, customers will enjoy greater viewing flexibility. For example, customers enjoying the advantages of a Comcast Digital Video Recorder (DVR) will be able to record PEG programming so they never miss a city council meeting, school program or community event.

If you have any questions about the upcoming channel changes, please feel free to call 1-877-824-2984.

Channel Name	Current Channel	New Channel (by Jan. 15)
Comcast Television	25	900
Bloomfield Educational Access	16	902
Birmingham Educational Access	17	903
MLTV/Bloomfield Community Television	15	911
Public Access	18	916

\*Birmingham

Certain services are available separately or as a part of other levels of service. A converter/remote control is required to receive Digital Cable. Fees apply to DVR subscription. Services are subject to the terms and conditions of applicable Comcast subscriber agreements. Call Comcast for service details and restrictions. © Comcast Cable Communications, LLC. All rights reserved.

C601





November 15, 2007

Mark Steenbergh, Mayor  
City of Warren  
One City Square  
Warren, MI 48093

Dear Mr. Steenbergh:

At Comcast, we are committed to making public, education and government (PEG) programming readily available to all of our customers. By January 15, 2008, Comcast will deliver PEG programming in a high quality digital format and place these channels in consecutive channel positions largely uniform across the state. Customers will be notified of these channel changes beginning November 15, 2007 by a bill insert, a copy of which is enclosed, reflecting the transition of the current PEG channel to its new channel position.

Comcast will continue to offer PEG channels on our basic tier; however, we will deliver these channels in a digital format. Comcast is offering a special promotion of a free converter box to analog customers. Customers who use CableCard or have a QAM TV set will not need the additional digital converter box to receive these channels.

To support these efforts and reinforce the importance of this programming, Comcast plans to partner with our communities in a public service announcement (PSA) campaign that will create awareness of the value of community programming and inform customers of the new channel locations. Comcast will simultaneously consolidate existing Comcast-created Local Origination (LO) channels to a single digital LO channel, bolstering the image and value of the Comcast Community Network statewide.

Comcast recognizes the investments communities have made in their PEG programming offering, so in addition to the PSA campaign, Comcast will provide conversion at no cost and continue to maintain existing free transmission lines of PEG channels. Comcast will continue to partner with communities to ensure there is a smooth transition.

If you have any questions, please feel free to call me at 586-883-7075.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald W. Smith", written in a cursive style.

Gerald W. Smith  
Government Affairs Manager  
Comcast, Michigan Region  
36250 Van Dyke Ave.  
Sterling Heights, MI 48312

At Comcast, we are committed to offering superior community programming to our subscribers. Therefore we are pleased to announce that Comcast is now able to provide public, education and government (PEG) programming in a high-quality digital format on consistent channels in uniform locations statewide.

**To deliver these benefits to you, all PEG programming will be transitioned to a digital format by January 15, 2008.**

**Basic Cable Customers:**

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**Digital Cable Customers:**

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**Stay Connected to Community Programming:**

In addition to the benefit of viewing PEG programming in digital-quality, customers will enjoy greater viewing flexibility. For example, customers enjoying the advantages of a Comcast Digital Video Recorder (DVR) will be able to record PEG programming so they never miss a city council meeting, school program or community event.

If you have any questions about the upcoming channel changes, please feel free to call 1-877-824-2984.

Channel Name	Current Channel	New Channel (by Jan. 15)
Local Programming	12	900
Educational Access	20	902
Educational Access	22	903
Government Access	5	911

Certain services are available separately or as a part of other levels of service. A converter/remote control is required to receive Digital Cable. Fees apply to DVR subscription. Services are subject to the terms and conditions of applicable Comcast subscriber agreements. Call Comcast for service details and restrictions. © Comcast Cable Communications, LLC. All rights reserved.

CS85

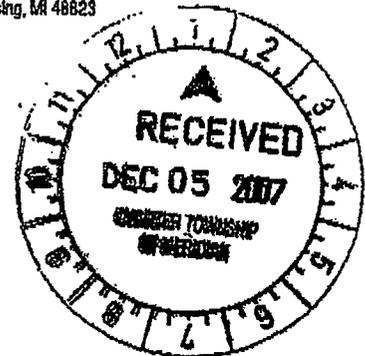


# **EXHIBIT 3**

**(Correspondence with Charter Township of Meridian  
and the Michigan Chapter of NATOA)**



Comcast Cable  
1070 Trowbridge Road  
Lansing, MI 48823



December 4, 2007

Ms. Susan McGillicuddy, Supervisor  
Charter Township of Meridian  
5151 Marsh Road  
Okemos, MI 48864-1198

Dear Ms. McGillicuddy:

Thank you for contacting me with your questions relative to Comcast's PEG channel migration. Another letter to the communities we serve will be sent this week, but I wanted to get back with you about some of the concerns you expressed in your letter to me.

PEG programming is remaining as part of the Basic cable service. Our customers will not be required to upgrade their service to continue receiving PEG channels. This is similar to channel 249 "Sky Team 10 Weather Source" on the current channel line up in Meridian Township. While channel 249 is part of the Basic cable service tier, a QAM TV, CableCard or a digital converter box is required to view the programming.

Comcast is offering its analog customers the use of a digital converter without charge for a one-year period. After that period, then-current retail prices or promotional offering will apply. Currently, the retail price is \$4.20 a month for a digital converter and remote; however, our current promotion is for the digital converter and remote for \$1.99 as part of our Digital Starter package. Again, upgrading service levels is not required to continue viewing PEG programming.

While neither the existing cable franchise nor P.A. 480 of 2006 ("the Act") prohibits the delivery of PEG programming in a digital format, section 17 of the existing franchise did anticipate that access channels may be relocated. Comcast has not filed a Uniform Franchise under the Act with the Township, but section 5(3) of the Act deems provisions in existing franchises that are in addition to those in a Uniform Franchise to be unenforceable.

Comcast is committed to working with our communities to make PEG programming available to its customers and to delivering it in a high-quality format. Comcast will provide the digital conversion of the PEG programming at no cost to the community. Comcast will also continue to maintain existing transmission lines of PEG channels. Coupled with the PSA campaign and promotional offers to our customers, Comcast is striving to make this a smooth transition.

Please feel free to contact me at (517) 333-6028 if I can be of further assistance.

Sincerely,

John P. Gardner  
Government Affairs Manager  
Comcast, Michigan Region



Comcast Cable  
29777 Telegraph Rd.  
Michigan Region  
Southfield, MI 48034

December 7, 2007

*Via Overnight Delivery & E-mail*

Caren Collins Fifer, President  
Michigan NATOA  
33300 Nine Mile Road  
Farmington, MI 48336

**Re: Digital PEG Channels on the Basic Service Tier**

Dear Mrs. Collins Fifer:

I am responding to your recent letter asking questions regarding the provision of PEG channels in digital format as part of Comcast's basic service tier. Let me begin by letting you know that we appreciate the Michigan Chapter's willingness to work through the issues involving PEG digitization. As you know, we have started running a new public service announcement promoting PEG programming and alerting customers to the move. Thank you again for providing us the footage that was used to create the spot. With your help, we hope to create additional spots as we move forward that feature familiar local faces, more detail on the new standard channel locations and additional details that will be helpful to both communities and viewers.

Your letter posed operational questions and legal questions regarding digital PEG channels. Please share our response with your members and feel free to forward to me any further questions that may arise.

#### **Operational Questions**

##### **Why has Comcast chosen to digitize and move PEG channels now?**

We believe the timing of this effort reflects the overwhelming market adoption of digital services, ensures that PEG is not left behind in the digital transition, and enhances our ability to provide the additional services and features our customers want. Because of Michigan's high digital penetration, the only change a majority of our customers will experience is in the channel position of PEG.

As you may be aware, cable operators have been providing more and more channels in a digital format for some time now. PEG channels should not be left behind. Digital delivery enhances the signal quality and reliability for the programmer, a benefit that should enhance the viewer's PEG experience overall.

Digitizing PEG channels along with other channels also frees up bandwidth on the cable system which we will use to provide even more channels and enhanced services. For example, customers are demanding, and programmers are now providing, more high-definition channels. Comcast has also always been a leader in providing our customers faster and faster Internet speeds.

As to the relocation of PEG channels at this time, the digital transition strikes us as a logical opportunity to establish a uniform location for PEG and related content state-wide. Uniform channel locations enhance our and your ability to promote and market the PEG channels on a broader basis.

**Is the company's strategy somehow related to the "digital transition" currently scheduled to occur in February, 2009?**

Certainly the broadcast TV digital transition coming up roughly a year from now is bringing the digital issue to the forefront of the public's awareness. Our initiative in this regard will give Michigan consumers a leg up on the digital transition. The success of our existing digital services in Michigan is evidence of the forward thinking nature of your constituents.

**Will Comcast continue to offer an analog-only tier to its customers after the "digital transition" date?**

For competitive reasons, we decline to comment on our thinking about marketing strategy in any given market post-February, 2009. But I would point out that what we are talking about today with our provision of PEG in digital is a basic service tier that is "analog-plus" not "analog-only". At this time, we will not be offering a service tier that is "analog-only."

**Why aren't other basic service tier ("BST") channels being digitized and repositioned at this time too?**

We anticipate that over time more channels will go through similar changes. Among other reasons, many of these channels are subject to contracts or legal requirements that may not have the same flexibility at this time.

**Will Comcast proactively provide digital boxes to all BST-only customers without any installation or monthly charges so those customers can continue to receive PEG channels?**

We are offering a free digital box to all BST customers for the first year following this change. Of course, customers may have their own digital equipment or obtain it from a third party such that they will not need our equipment. There will be no installation charge for those BST customers who receive a digital box during this transition period.

**Will digital boxes be provided for each additional outlet which currently exists in a BST-only customer's home?**

Comcast will supply one free box per BST-only home.

**Will multiple box swaps be required because Comcast hopes to digitize PEG channels in advance of the "digital transition" date?**

No. In fact, Michigan consumers will have a lead on the rest of the country in this regard. Of course, the Comcast change has no effect on people who don't subscribe to cable service. People who receive broadcast TV signals over the air will need digital equipment of some kind in order to continue to receive broadcast TV signals after the "digital transition."

**Where will other BST channels be positioned on any eventual, fully-digitized lineup relative to the "900" range proposed for PEG channels?**

We don't know the answer to this question at this time. In many instances, channel position is arranged by contract with the programmer. It is possible that a fully-digitized lineup would allow for regroupings of content by primary subject matter (sports, movies, foreign language, music), for example.

**Will full digital service be offered to current BST-only customers without charge, or will the digital converters associated with this plan be used more like a "trap," and simply deliver digitized PEG programming?**

BST-only customers will see an enhancement to their service beyond the quality of the digital PEG channels. If they use a box, they will also have access to the interactive digital channel guide, convenient parental controls, and access to pay per view and event programming. Customers would still need to choose to subscribe to a digital tier of service to receive additional channels that are not part of the BST.

**What financial support is being offered by Comcast to help local governments transition PEG channels and reduce the expense associated with rebranding those channels?**

We believe this change imposes no new equipment costs on PEG programmers and the digitization will take place on Comcast's part. In regards to rebranding and consumer education, Comcast understands that communities may incur expenses associated with rebranding these channels. Some communities have specifically mentioned letterhead and business card changes that will be required because of the change. We will consider reasonable reimbursement to offset these expenses.

Caren Collins Fifer, President  
Michigan NATOA  
December 7, 2007  
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**Has the company announced this same plan in other parts of the county? If so, where? If not, why has Comcast's Michigan Region been singled out?**

Michigan is the first state to implement PEG channel digitization and line up consistency in this type of coordinated way.

### Legal Questions

**Which provision(s) of governing law permit Comcast to initiate the proposed digitization and move PEG channels at this time?**

It is important to understand that we are not changing the composition of the basic service tier, only the format in which some components of the basic service tier are delivered. Customers who choose to take only our most basic level of service receive all local PEG channels as part of that basic service today, and they will continue to receive those PEG channels on Basic after digitization. The Basic Service Tier will not have changed. This is consistent with federal law.

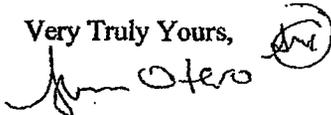
Likewise, state law places no limitation on a provider's determination of the placement of PEG channels. The Uniform Video Services Local Franchise Act (2006 PA 480) requires that providers offer the same number of PEG channels in actual use as of the effective date of the Act 480. We are. The relocation of the existing PEG channels on the Basic Service Tier is consistent with state law.

It is worth noting that besides there being no legal requirement that cable operators offer PEG programming in analog format only, none of cable's national competitors offer it in analog. AT&T and Verizon's video services are digital and require a box, without which you cannot view PEG channels. Of course, satellite companies carry no PEG channels whatsoever.

### Meeting

I hope the above responses have answered the most pressing concerns and questions of the MI-NATOA members. We accept your invitation to meet to discuss the transition. Please propose some dates and times for the meeting. We would be happy to host. In the meantime, please do not hesitate to call me with any additional questions.

Very Truly Yours,



Juan Otero

Vice President, Government Affairs



January 8, 2008

Comcast Cable  
29777 Telegraph Rd.  
Michigan Region  
Southfield, MI 48034

Charter Township of Meridian  
Susan McGillicuddy, Supervisor  
5151 Marsh Road  
Okemos, Michigan 48864

Re: Comcast's Response to Charter Township of Meridian's "Notice and Opportunity to Cure Non-Compliance"

Dear Ms. McGillicuddy:

Comcast is submitting this further response to your letter of December 18, 2007, regarding an alleged Notice and Opportunity to Cure Non-Compliance. As you are aware, Comcast has previously written to you in response to Comcast's plan to offer digital public, education and government (PEG) channels on its Basic Service Tier (BST). We also understand that you are in possession of Comcast's December 7, 2007 letter to Michigan NATOA addressing various operational questions they raised regarding the provision of PEG channels in a digital format on the Basic Service Tier.

As you are aware from our previous correspondence, Comcast will continue to offer PEG channels on its basic tier; however, beginning on January 15, 2008, Comcast will deliver these channels in a digital format. Digital delivery enhances the signal quality and reliability for the programmer, a benefit that should enhance the viewer's PEG experience overall. Moreover, digitizing channels frees up valuable bandwidth on the cable system, which we will use to provide even more channels and enhanced services. For example, customers are demanding, and programmers are now providing, more high-definition channels. In a competitive marketplace, it is critical that we provide customers with these highly desired services as quickly as possible.

As to your expressed concerns regarding the relocation of PEG channels, we believe that uniform channel locations ultimately will enhance the collective ability to promote and market PEG channels on a broader basis. To address concerns regarding this relocation and to support and reinforce the importance of PEG programming, Comcast is running a public service announcement (PSA) campaign that fosters awareness of the value of community programming and informs customers of the new channel locations.

Regarding your assertions related to a delivery charge for the free set top box we have made available as part of this transition, please note that there is no delivery or installation charge for those customers who receive a digital box as part of this transition. The delivered digital box will also come with easy to use installation instructions. Of course, many customers may already have their own digital equipment or obtain it from a third party, such that they will not need our equipment. With regard to your concern regarding educational

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Charter Township of Meridian  
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programming to schools, Comcast will also supply a courtesy digital box to accommodate each school and has been working proactively with schools to address other concerns.

With respect to your legal concerns, it is important to understand that we are *not* changing the composition of the Basic Service Tier, only the format in which some components of the Basic Service Tier are delivered. Customers who choose to take only our most basic level of service receive all local PEG channels as part of that basic service today, and they will continue to receive those PEG channels on the Basic Service Tier after digitization. The Basic Service Tier will not have changed. This is consistent with federal law.

Federal law does not restrict the technical delivery of PEG channels, and it expressly precludes local franchising authorities from dictating transmission technology. Contrary to the legal positions advanced in your letter, there is nothing inappropriate with offering a basic service tier in a manner that might require some customers to acquire additional equipment. Indeed, the Communications Act clearly contemplates that equipment may be necessary to receive the basic service tier and cable operators may charge customers for that equipment. *See, e.g.,* 47 U.S.C. Section 543(a)(7); (b)(3). Comcast disagrees that offering the basic service tier in a digital format runs afoul of the "encryption" prohibition found in Section 76.630(a) of the FCC's rules. Indeed, Comcast will be delivering the digital programming at issue in an *unencrypted* fashion. If the customer has digital capability, no additional equipment will be necessary.

The relocation of the existing PEG channels on the Basic Service Tier is also consistent with state law. It is worth noting that besides there being no legal requirement that cable operators offer PEG programming in analog format only, none of cable's national competitors offer it in analog. AT&T's video services are digital and require a box, without which you cannot view PEG channels. Of course, satellite companies carry no PEG channels whatsoever.

At this point, Comcast must reserve all our legal rights regarding this matter. Of course, Comcast welcomes the opportunity to meet and work with you to ensure that the Charter Township of Meridian and its citizens are able to receive all of the benefits of our plan to digitize PEG channels on our BST beginning on January 15, 2007.

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January 8, 2008  
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If you have any further questions or concerns, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Otero', written over the printed name.

Juan Otero  
Vice President Government and  
Regulatory Affairs, Michigan Region

# **EXHIBIT 4**

**(Comcast PSA Transcript)**

COMCAST  
PEG PSA  
EDITOR: David Strong  
ANNOUNCER: Laurel Hess  
1x: 30 Sec.

Public Education and Government television programs reflect the interest and diversity of Michigan communities and Comcast is committed to delivering PEG programming in the highest quality possible. PEG TV, Public Education and Government television. Your voice. Your community. Your PEG. To stay informed about your community, you can view these channels in a high quality digital format on channels 900 through 925.

These channel locations will go into effect January 15, 2008.