August 4, 2009

VIA ELECTRONIC COMMENT FILING SYSTEM (ECFS)

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

Re: IN THE MATTER OF A NATIONAL BROADBAND PLAN FOR OUR FUTURE, GN Docket No. 09-51, PETITIONS FOR DECLARATORY RULING REGARDING PUBLIC, EDUCATIONAL, AND GOVERNMENTAL PROGRAMMING, CSR-8126, CSR-8127, CSR-8128, MB Docket No. 09-13

Dear Ms. Dortch:

This *ex parte* notice is filed on behalf of the National Association of Telecommunications Officers and Advisors ("NATOA"). On August 3, 2009, NATOA, represented by Ken Fellman, NATOA President-Elect, Joanne Hovis, NATOA Board Member, and John D. Russell, NATOA Government Relations Advisor met with Jennifer Schneider, Legal Advisor to Commissioner Copps. The parties discussed the workshop meetings being held by the Commission as it relates to GN Docket No. 09-51, and how to go about participating in these workshops. The parties also discussed issues raised by the comment period for GN Docket No. 09-51, specifically claims made against local governments as it pertains to facilities siting and taxation. Finally, the parties briefly discussed the outstanding PEG petitions that comprise MB Docket No. 09-13, and asked about the status of that docket.

Pursuant to Commission rules, please include a copy of this notice in the record for the proceeding noted above.

Sincerely,
/s/ John D. Russell
John D. Russell
Government Relations Advisor
NATOA

cc: Jennifer Schneider, Legal Advisor to Commissioner Copps

Introduction to NATOA's Broadband Principles

For centuries, the United States has been a world leader in economic development and social initiatives. From the 19th century railroad systems and the early 20th century electric and telephone networks' expansion, to the post-World War II highway system and airport construction, investments in physical infrastructure have been instrumental in supporting social and economic progress.

Today, the United States is at a critical juncture. Economic and social development increasingly depend on advanced communications infrastructure. However, there is no strategy in place for widespread deployment of next-generation broadband networks. Our failure to take immediate action threatens to relegate our country to second-class status in the broadband age.

The future of broadband is about more than viewing television, surfing the Web and making phone calls. It is about new forms of communication and mass collaboration through the virtually unlimited potential for sharing information, storage capacity, processing power and software made possible through high-capacity bandwidth connections. This collaboration will generate new ideas, accelerate economic development and lead to opportunities for wealth creation, social development and personal expression.

While other industrialized nations have developed strategies for next-generation broadband infrastructure, the United States still lacks a national broadband strategy. The lack of a proactive strategy has effectively ceded control of our broadband destiny solely to the private market without sufficient regard for the public interest or the unique needs of local communities. This approach has not resulted in the investment needed and has failed to realize the many positive externalities created by next-generation broadband networks. The effects of this failure are clearly manifest: fading international rankings for broadband penetration; relatively low bandwidth at high costs; throttling of peer-to-peer communications; and little competition among service providers. Moreover, the future contours of broadband in the U.S. are being defined by a small number of private entities.

NATOA is increasingly concerned that the communities we represent are losing their competitive advantage to communities in Europe and Asia due to the lack of federal and state broadband leadership. This inaction will likely harm the competitive status of local communities with respect to education, healthcare, economic development, standard of living, and the level and quality of civic discourse. Inaction will adversely affect local governments' ability to provide public safety or to create a more sustainable environment for the future.

Local governments have always played an essential role in ensuring that the benefits of communications infrastructure would be available in communities across the United States. Localities will, by necessity and by choice, be part of the solution to our national broadband deficit. To that end, NATOA has adopted its Broadband Principles.

BROADBAND PRINCIPLES

The National Association of Telecommunications Officers and Advisors (NATOA) supports the development of a National Broadband Strategy consistent with the following principles.

1. NATOA calls for the immediate nationwide deployment of advanced broadband networks.

The United States faces a broadband crisis. Broadband network infrastructure is critical to economic growth. New and emerging applications and services demand more bandwidth than can be delivered by most current domestic networks. The gap between the United States and other industrialized nations is growing wider. Our country is becoming a digital also-ran with serious adverse consequences to our economic competitiveness and quality of life.

The United States has a proud history of deploying electric, telephone and transportation infrastructure to all parts of the country. Now we are challenged again. We are behind and the buildout of advanced broadband networks will take time. We must act now!

2. True broadband requires high capacity bandwidth in both directions.

To grow and enhance economic opportunity, local communities must have access to interactive, open, broadband networks with sufficient capacity to meet the increasing information, communications and entertainment needs of their residents, businesses, institutions and local governments. US competitors in Europe and Asia are building broadband networks that can provide bandwidth of 100 Mbps to 1 Gbps to each premise. Those networks serve as platforms for continuing innovation and allow the delivery of new services and applications that will transform these nations' economies and enhance the quality of life. To remain globally competitive, networks in this country should meet or exceed those standards and be designed so that capacity can be expanded by replacing electronics without having to rebuild the networks.

It is important for America's networks to offer symmetrical, high capacity bandwidth in both directions, as with many of the new networks in Europe and Asia. Ample upstream bandwidth empowers network users to become creators and distributors of content and applications, as well as recipients of services. NATOA believes that the success of Web sites featuring user-provided content, as well as the successes of traditional educational, government and public access television, demonstrate that people can and will become content creators if they are afforded the tools to do so.

3. Fiber to the premises is the preferred broadband option.

Broadband networks use several wire-based and wireless technologies, including: copper and other metal wires; coaxial cable, multimode fiber optics; single-mode fiber optics;

microwaves; Wi-Fi; and WiMax. The transmission bandwidth and reliability characteristics and capabilities of each technology vary based upon many factors, including: the specific technology; the transmission distance and the connecting and terminal equipment being used. Currently, single-mode fiber optic networks are capable of transmitting the most bandwidth with the highest reliability. They show the best potential to handle increasing future demands for higher speeds and greater quantities of information.

NATOA recognizes that it will not be economically feasible to bring fiber optics to all communities in the near term. Where fiber connection is not practical, other technologies, such as high capacity coaxial cable or wireless, may be viable if they achieve the bandwidth levels described above. In the long run however, the goal should be to make fiber to the premises universally available.

Wireless networks are an important part of the broadband picture. Wireless allows mobility, and offers a competitive choice for Internet access with quick and relatively low cost deployment. Wireless will not be a substitute for an all fiber network but will play a complementary role.

4. High capacity broadband connectivity must be affordable and widely accessible.

An informed citizenry requires knowledge and opportunities for expression. NATOA believes that everyone should be able to access the information and services that high capacity broadband networks will provide. Without reasonable prices and equitable access many of our citizens will not be active participants in the broadband age. Our residents and our society will benefit from wide availability, since the communicative power of the network increases exponentially as more network endpoints are created. High capacity broadband networks can bring to bear the collective ingenuity and enterprise of our citizens to find solutions to the many problems confronting us. NATOA believes that everyone should have access to high capacity networks at reasonable prices.

5. High capacity broadband requires open access networks.

Fiber optic networks continue to demonstrate economies of scale. This characteristic gives the owner of the fiber platform an unbeatable advantage over other service providers. It is expensive – perhaps prohibitively so - to build multiple fiber networks in one community. Thus the owner of the first and therefore dominant network can set unfair terms and prices for others to use it. On the other hand, multiple service providers who can compete over a common platform will fuel innovation in broadband services, which will benefit local communities and society. Thus structural or regulatory measures must be employed to protect the right to non-discriminatory access to networks for all competing service providers and to forestall unfair business practices by network owners. NATOA recognizes that private developers of new fiber networks must be able to seek a realistic return on investment. This is consistent, however, with providing access on non-discriminatory terms.

6. Network neutrality is vital to the future of the Internet.

It is vital to the future of the Internet that network owners not discriminate in terms of content transport or unnecessarily interfere in communications between end points on the network. Where packet prioritization is necessary network owners must provide similar treatment to all providers of like services. NATOA believes that everyone must have the unabridged freedom to create, post or access any lawful content and services and to attach any devices to the network as long as they do not impair network performance. Many current network traffic management strategies are a function of scarce bandwidth capacity and should not be necessary with high-capacity networks.

7. All networks and users have the right and obligation to non –discriminatory interconnection.

Broadband communications at the local access level can be fast and economical. However, data packets that leave the local access network and traverse the public Internet will flow only as fast as the slowest connections between end points. To facilitate reliable, high-bandwidth, symmetrical, peer-to-peer communications between our communities and to promote the expansion of open access networks, NATOA supports the direct linkage of local broadband fiber network peering points through the use of long haul fiber. All local broadband networks must have the right and obligation to non-discriminatory interconnection with other broadband networks using common, interoperable standards and protocols.

8. Local governments must be involved to ensure that local needs and interests are met.

The desired development of high capacity broadband networks and broadband services will require extensive collaboration among all parties: local communities, regions, state governments, national government, the private sector, interest groups and others. While the U.S. has plenty of broadband capacity in the “long haul” routes, fiber connections rarely reach homes and small businesses. Local governments are central players in ensuring that this “last mile” fiber connection to homes and businesses is achieved. Local elected officials are well positioned to evaluate the infrastructure and economic development tools needed to sustain viability, encourage growth and ensure that the unique needs and specific interests of local communities are addressed. NATOA believes local governments must be recognized as key partners to industry and the states and federal government in broadband development.

9. Local governments must be allowed to build and operate broadband networks.

Local geographic communities share common interests and offer the best opportunity for acceptance and growth of high capacity broadband. The right of local governments to build and operate broadband networks must not be infringed. Public agencies and community-based non-government agencies also need to have equal opportunity to participate through

meaningful investments in communications infrastructure. Communities must have the freedom to meet their unique communications needs. NATOA believes that local governments and the communities they serve must be able to preserve the policy option to own and operate public broadband networks. Any existing prohibitions on local government communications initiatives must be abolished.

10. A variety of options must be considered to cover deployment costs.

It is not yet clear which methods of funding deployment are best. Different methods may be preferable in different communities. For example, networks may be financed by private investment, by government investment, by public-private partnerships, by tax incentives, or by other means. None of these approaches should be prohibited by law or burdened by special restrictions (such as laws that forbid cross-subsidy by governments but allow it for private entities).

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Fiber: Important To Your City's Economic Health

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Upcoming NATOA Events

2009 Spring Conference
May 18-19, 2009, The Liaison Capitol Hill, Washington, DC

2009 Annual Conference
September 29 – October 3, 2009, Sheraton New Orleans, New Orleans, LA

2009 Government Programming Awards
Call for Entries Period: January 9 – March 27, 2009

eNATOA electronic learning series
All sessions last one hour and are offered at 2:00 pm eastern/ 11:00 am pacific time.
January 12 - DTV Transition Issues
February 9 - State Franchising
March 9 - Communications Policy Issues under the New Administration and Congress
April 13 - Policy and Legal Issues Related to Access TV Programming
May 11 - Why Your Community Needs a Telecommunications Policy Plan
June 8 - PEG Funding Models
July 13 - The Intercarrier Compensation and the Federal Universal Service Funds and how it Promotes NATOA's Broadband Policy Principles
August 10 - New Media Topics
September 14 - Primer on Spectrum Policy: Find out what spectrum is available to your community and how your community can use it
October 12 - Wireless Communications Facilities Planning
November 9 - City Community Technology Initiatives to provide "Digital Opportunities" to their Communities
December 14 - 2009 Retrospective: 2010 Preview: Hot issues in Communications

For more information regarding these events, visit www.natoa.org or contact NATOA at info@natoa.org.

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Reflection on NATOA's Strategic Planning Weekend November 2008

"Anything you can do or dream you can, begin it. Boldness has genius, power, and magic in it"

— Goethe

"Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully."

— Samuel Johnson, in James Boswell, *Life of Johnson*

In early November the NATOA Board of Directors and staff gathered in Alexandria, VA at NATOA's new Headquarters for three days of Strategic Planning. Before we began I shared my leadership philosophy with the Board. The approach is called "shared leadership" and is based on what Geese have taught us.[1]

Shared Leadership

As each goose flaps its wings it creates an "uplift" for the birds that follow. By flying in a "V" formation, the whole flock adds 71% greater flying range than if each bird flew alone. ***People who share a common direction and sense of community can get where they are going quicker and easier because they are traveling on the thrust of one another.***

When a goose falls out of formation, it suddenly feels the drag and resistance of flying alone. It quickly moves back into formation to take advantage of the lifting power of the bird immediately in front of it. ***If we have as much sense as a goose we stay in formation with those headed where we want to go. We are willing to accept their help and give our help to others.***

When the lead goose tires, it rotates back into the formation and another goose flies to the point position. ***It pays to take turns doing the hard tasks and sharing leadership. As with geese, people are interdependent on each other's skills, capabilities and unique arrangements of gifts, talents or resources.***

The geese flying in formation honk to encourage those up front to keep up their speed. We need to make sure honking is encouraging. ***In groups where there is***

[1] Author unknown, found on the internet

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encouragement the production is much greater. The power of encouragement (to stand by one's heart or core values and encourage the heart and core of others) is the quality of honking we seek.

When a goose gets sick, wounded, or shot down, two geese drop out of formation and follow it down to help and protect it. They stay with it until it dies or is able to fly again. Then, they launch out with another formation or catch up with the flock. ***If we have as much sense as geese, we will stand by each other in difficult times as well as when we are strong.***

With this metaphor for teamwork fresh in our minds, the members of the NATOA Board engaged in an intensive, spirited series of discussions and workshops over a number of days. Specifically, we conducted an environmental scan, updated NATOA's mission and goals, identified many projects to pursue and came away somewhat exhausted but satisfied that NATOA is moving in the right direction. Work will continue on the strategic plan but we wanted to share some information with you now, even though it is a work in progress.

Strategic Planning is an organization's process of defining its strategy, or direction, and making decisions on allocating its resources to pursue this strategy, including its capital and people.[2] A good strategic plan acts as a compass. It helps an organization focus on its goals for the future and how to achieve them. The introductory quotes from Geothe and Johnson are appropriate because NATOA is driven by a dream of affordable, ubiquitous broadband, well-funded PEG in every community and a return to communications policy that reflects local community needs and interests. Yet we are all too aware of the economic turmoil and relentless changes in technology facing us, so we are also highly motivated to maintain our efficacy.

Environmental Scan

The Board conducted an environmental scan that included reviewing the Megatrends developed by the 2008 Strategic Planning Committee and reviewing NATOA's strengths and weaknesses.

Megatrends

Some of the societal, governmental and technological trends of greatest potential importance are:

- Federal and state legislative and regulatory actions that pre-empt local government authority; Failure of federal and state governments to maintain the traditional analysis of the public interest (too heavy on market and industry)
- Consolidation of the communications industry
- Transition to broadband and IP
- New media changing how people send and receive information — particularly younger people; Increase in on-line activities
- Transformative nature of technology in how we live
- Aging population and NATOA membership
- Consumer expectations for more convenience and choice
- Greater involvement of local government in broadband and the delivery of service

Strengths and Weaknesses

Among NATOA's strengths are dedicated members, strong ties with local communities, a commitment to the public interest, dedication of staff, and PEG

[2] Wikipedia

content. Among NATOA's weaknesses are the lack of marketing and PR, constrained resources, not embracing new media, not enough Hill presence and tendency to be reactive rather than proactive.

After much discussion the following Mission and Goals were adopted by the Board.

Mission

The mission of NATOA is to support and serve the communications interests and needs of local governments. We are a professional association made up of individuals and organizations responsible for – or advising those responsible for – communications policies and services in local governments throughout the country. Our summary mission is "Promoting Community Interests in Communications."

Goals

- **Build the Capacity of Members**
  NATOA builds members' expertise and capability by providing and promoting leadership, programs, service and recognition.
- **Be a Leader in the Development and Advocacy of Public Policy in Communications**
  NATOA is a recognized leader promoting the development of communications public policy issues and helping members formulate and advocate policies that advance their community interests.
- **Promote and Sustain an Active, Thriving and Diverse Organization**
  NATOA builds and fosters partnerships and collaborations to provide value added services to our member communities.

We identified some key areas where we want to devote some resources: find innovative ways to communicate with members; increase and improve learning opportunities for members; expand strategic alliances and partnerships with a wide variety of organizations; continue to promote affordable, ubiquitous broadband; and increase NATOA's presence on Capitol Hill, at the FCC and with the new Administration.

Now the challenge will be to put the finishing touches on our plan and creatively and imaginatively implement the strategic plan within our limited resources. To do this we will need your help! Think about the following question and you have an idea of what we are striving for. Suppose you are writing a 2050 history book that has a section on NATOA's contribution to America. What does it say?

Finally with all the challenges of leading this great organization I was reminded of what Harry S. Truman said, "You give an order around here, and if you can figure out what happens to it after that, you're a better person than I am." A sense of humor is paramount in today's NATOA world.

Mary Beth Henry,
NATOA President

Fiber: Important To Your City's Economic Health Lafayette, Louisiana's Success Story

By L. J. "Joey" Durel, Jr.

During the 1890s, municipalities were doing anything they could to get that new technology called electricity to their communities. Like so many, Lafayette, Louisiana found itself being left out because it made no economic sense for a company to invest in the infrastructure required. So in 1896 the people voted, unanimously, to form their own citizen-owned utility company and take control of their own future. A year later our small town of about 3,500 people built the infrastructure of the 20th century and got electricity. Because of what this did to enhance the quality of life for the citizens of Lafayette, today it is the largest city in south central Louisiana.

Interesting how history repeats itself. That same discussion is now taking place all around America, just on a slightly different subject. Today's discussion is whether or not municipalities should provide broadband to their citizens, and once again Lafayette is at the forefront of that discussion. Just as our forefathers did in the 1890s, we asked the "private sector" to provide our community with the essential infrastructure needed to catapult Lafayette into the future. We wanted Fiber to the Premise. Since we already had a fiber loop around Lafayette and were providing broadband to wholesalers who were then selling it to larger companies, they knew we were capable of doing it ourselves.

And we could provide not just high speed internet, but also television and telephone service to both residential and commercial customers. Just like in 1896, the private sector providers told our citizens that it made no business sense for them to bring state-of-the-art infrastructure to a town the size of Lafayette, now with a population of around 121,000. And they were right; it really didn't make sense for them to do it. So, we simply told them we understood and asked them to get out of our way. Of course they didn't. After a couple of years of court battles, the Louisiana Supreme Court unanimously authorized us to go forward– just as it had done in 1896. We had already received the approval of our citizens by a vote that resulted in a 62% to 38% victory by the 9th most conservative city in America. Our citizens realized that just as in 1896, if we didn't do it, we were not going to get it.

So, how did we get the support of the citizens of Lafayette? First of all, Lafayette is a very entrepreneurial community, as a result of its unique heritage of cultures that were all forced to the area from somewhere else. That includes the Cajuns, Africans, French, as well as farmers and slaves from Haiti. These cultures had to assimilate in order to survive, and today that assimilation is clearly represented by our "gumbo." Add to that mix the risk-taking wildcatters that came to south Louisiana at the turn of the 20th century, and you have a town that works together not just to survive, but to excel.

If we were going to get this "infrastructure of the 21st century" our community had to know that it was a risk worth taking. The Chamber of Commerce had a great deal of credibility in town and was a good place to start, but not the only place. We also enlisted credible, civic minded business people to be the eyes on the project and ultimately a conduit to the business community. In the end, 20 past chairmen of the Greater Lafayette Chamber of Commerce stood together and endorsed our initiative. They did so because they did not see the project as a local government's effort to compete with the private sector, but as a way to spur economic development, enhance educational opportunity, and contribute in multiple other ways to the well-being of all residents, businesses, and institutions in the community.

But again that wasn't enough, because some perceived those individuals as not being representative of the entire community. And while every business organization in Lafayette endorsed the project, the most remarkable accomplishment was getting the Democrats and Republicans to stand hand in hand (holding their noses) for the greater good of the community. Additionally, we had mayors of small towns in our parish supporting it, because they knew that while they were not going to get it anytime soon, we represented their best hope for the future. Grassroots organizations played a huge role in getting support of not just the tech savvy, but the average consumer as well. We also enlisted the support of the Louisiana Municipal Association and The Louisiana Conference of Mayors. And we got all this support because we told the truth and offered hope for the future.

It is imperative that the truth be known and be told. We were bombarded with half truths, misleading statements and even outright lies. But we had the experience of other communities to look to as we put together a top notch multi-disciplinary team of fulltime in-house staff, as well as assembling outside technology, legal, financial, and public communications experts. Since we had done our homework on what other communities had gone through, our team was ready to refute, *immediately*, every one of the misleading or untruthful statements the incumbent providers threw out. With the help of our team, we developed a very conservative business plan that estimated costs higher than expected, revenues lower than expected, and timetables longer than expected; simply a plan for the worst and hope for the best approach. The key to our success was that, unlike our adversaries, we were always candid and truthful with everyone, especially the people of our community.

As expected, this became more than just a community battle, and anyone contemplating an initiative such as this has got to be prepared to fight for the long haul and on multiple levels. As stated earlier, our legal battles took us all the way to the Louisiana Supreme Court at a cost of around $1.3M (best marketing dollars we have ever spent). In addition, we had to fight for our project before the Louisiana Legislature, the Louisiana Bond Commission, the Louisiana Public Service Commission, and the City and Parish governing bodies. We also had to respond to constant requests for briefings and interviews with the local, state, national and international media. In appreciation of our thorough, candid, and timely responses, the media consistently portrayed our initiative in a highly favorable light.

Today, we are installing that infrastructure of the 21st century, and in January will begin servicing our first retail customers with great television and phone service as well as entry level internet service of 100Mbs. All three services will be at about 20% *cheaper* than what we are paying for less quality today. But, most exciting is what we will do with our *intranet*. Every customer will have peer to peer speeds of 100Mbs…for *no additional cost!* So, an engineering firm sending data to an architectural firm or a video game company communicating with our university will do so with 100Mbs, both ways. And we could give them more, but the computers are the bottleneck today.

As technology improves, Lafayette will be ready, and we expect to become a laboratory to research what could be done with not only 100Mbs, but what can be done with 1000Mbs

or 10,000Mbs. We hope that this will enable others to see what most of America's communities are missing, particularly those in states that have posed legal barriers to projects such as ours, and that it will encourage the federal and state governments to sweep such barriers away.

So, don't let anyone fool you into seeing this simply as a "government competing with the private sector" issue. This is a huge *free enterprise* initiative that will encourage creativity and economic development in Lafayette and other cities that decide to fight the battle. Our entire community, both the wealthiest and the poorest, will have inexpensive access to super fast broadband and Lafayette will surely solve the digital divide issue like none before us. The true "Broadband Heroes" will be the entrepreneurs that take advantage of this infrastructure and find ways to provide new services that will improve the quality of life for our citizens in ways we can't even imagine. The day will come when we look back and laugh at the discussion of 100Mbs being considered super fast. The question is how many other cities will be able to share that bit of humor along with us in Lafayette? Will your community be laughing with Lafayette? I hope so. ■

Lafayette (LA) City-Parish President ***Joey Durel*** *has been a huge supporter of technology initiatives, appointing the first-ever Chief Information Officer for Lafayette Consolidated Government shortly after taking office. Four months into office, Durel was instrumental in spearheading the Lafayette Utilities System Fiber Project, which will serve its first customers in January of 2009. He received the Fiber to the Home Council "President's Award" in 2005, the American Public Power Association Spence Vanderlinden Public Official Award in early 2008, and just recently was named the NATOA 2008 Community Broadband Hero of the Year. He is currently the Chairman of the Policy Makers Council of the American Public Power Association, and was just recently appointed by Louisiana Governor Bobby Jindal to the Technology Council of the Southern Growth Policies Board. Under Durel's leadership, Lafayette is well on its way to becoming the most-connected city in America.*

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Health I.T., Rural Broadband, and Common Sense

By Frank Odasz

Health I.T. as related to consumer empowerment in the knowledge age is much more than simply connecting doctor's offices and establishing electronic health records. How consumers can learn to take charge of their own wellness best practices, as well as best practices for keeping costs to a minimum, requires a more careful assessment of the integrated aspects of the online activities of citizens on behalf of personal and community wellness.

Without question, healthcare practitioners and patients need electronic access to personal health records. The trends in social media suggest email between consumers, health care providers, and pharmacists can help keep costs down and can streamline effective communications. Free two-way video services are already available to anyone with a fast Internet connection. The range and utility of home monitoring medical devices is growing rapidly.

Online prescription orders and online discount purchasing of medications can reduce costs significantly. Consumers definitely need more choices as to who they choose for healthcare, but also regarding their daily health-related behaviors and information resources.

Local posting of community health-related resources should include online personal health resources, such as Microsoft's Health Vault, *www.healthvault.com* and Google's new health resource, *www.google.com/health*

Local communities need to identify local mentors able to assist

Telemedicine is often the first broadband link to many rural communities, but too often there lacks an understanding of the importance of intelligent integrated use of fast Internet connections for community wellness.

those new to using the Internet for access to these and more specific resources such as disease specific support groups, government services of all types, and more. Such mentors could easily be trained seniors in coordination with community service programs – earning their monthly health insurance premiums by assisting others finding highly specific information and E-Government services.

Social media can be used to engage and train home healthcare agents and consumers. Social isolation is directly related to record suicide levels, particularly in remote Alaskan villages. Peer generated content and virtual communities of interest have already proven to be highly dynamic cost-effective ways of creating and disseminating valuable content. Peer mediated skills transferred via social media e-learning has vast untapped potential, and the rapid growth and evolution of social media for identifying new ways to meet existing needs is apparent. (Ask any teenager on Myspace or Facebook.)

An Alaskan Telemed program providing behavioral counseling in rural Alaskan Native villages raises the question of where does community wellness training in socially dysfunctional communities begin and end? If the lack of an economy is part of the roots of depression and substance abuse, why would we not provide e-learning solutions to resolve the source of the socio-economic behavioral problems? To prohibit such educational access via Telemed systems contradicts the Hippocratic Oath.

E-rate funding (universal service fund) in the past has taken a silo approach, authorizing separate broadband connections for health, and education, causing unused bandwidth to be wasted instead of shared – at the cost of the community wellness issues they were intended to assist. Some Alaskan villages have separate broadband connections for health, education, and business, due to federal policies, instead of sharing access in an economically sustainable model.

Telemedicine is often the first broadband link to many rural communities, but too often there lacks an understanding of the importance of intelligent integrated use of fast Internet connections for community wellness across the following nine essential areas: Safety; Health; Education; Entrepreneurship; Ecommerce/Telework; Social Services; Culture; Government; Entertainment. The role of E-Government systems is to provide the most integrated, cost-effective, efficient systems modern technology has made available, at our fingertips.

Health I.T. and broadband training best practices comprise 21st Century community wellness in an era of accelerating change, particularly in rural areas where the first broadband connections are often to the hospital only.

The dramatic health benefits of Telemed systems for entire communities require training for only those few Telemed professionals, whereas the broader community wellness benefits referenced above require citizen engagement in new knowledge and relationship-building to create the community-wide behavioral outcomes that sustainable communities will require in the 21st Century. The ability to participate in civic life online, and to learn-to-learn online, and to learn-to-EARN, from anywhere, has everything to do with citizen and community wellness. ■

Frank Odasz *founded the Big Sky Telegraph and co-founded the Consortium for School Networking (CoSN). He has served as a senior advisor on community networking to the Morino Institute and as a member of the Institute's web review team. He has also been an advisor to the Online Internet Institute, Princeton, New Jersey. Frank has served on the advisory boards of Hawaii Online, the Online Chronicle of Distance Learning, the Rural Datafication Conference, the "Creating Teacher Connections" Annenberg project, the Community Networking Institute (Kearney, Nebraska), the NSF/Network Montana Community Networking Project, and the US WEST Montana Teachers Network.*

He was listed as one of the one hundred most influential people in the microcomputer industry by Microtimes Magazine, in 1990. Under his leadership, Big Sky Telegraph has been cited for excellence in four reports by the Congressional Office of Technology Assessment, and by a major study on rural telecommunications and economic development produced for the U.S. Telephone Association by Mesa, Inc. Big Sky Telegraph was included in 1992 NII White House Agenda *report as a network model of excellence.*

PEG Tripod Needs Three Legs; May Be Lifeboats for Big Media's Sinking Ships

By Mark A. Hart

Like legs on a tripod, Public, Educational, and Government (PEG) cable channels need to stand together or they may fall alone in the face of regressive legislation and hard economic times. In addition, mainstream media downsizings make causes related to open government and free speech like PEGs all the more important now.

Nowhere is that more apparent than in Florida, long a leader in media trends and where the state Consumer Choice Act of 2007 has potentially legislated PEGs out of existence. "The truth is that the bill is not consumer friendly and will not produce lower cable TV rates," said Louise Thompson, Executive Director of the Tampa Bay Community Network.

"Along with removing local controls over rights of way, the bill negatively impacts local government revenues and the ability to monitor service, permits discontinuation of cable service to some residents, and does not guarantee service to all residents," Thompson said. "Most importantly, the bill marks the beginning of the end of PEGs and, with that, Government-in-the-Sunshine and free speech on the cable-waves of Florida."

The Tampa Bay Community Network is now the only public access channel remaining in Florida. By 2012, Florida public access stations may be retained only by a majority vote of all subscribers, not just all poll respondents, in a given service area. Not even popular political candidates can garner that kind of majority from among all registered voters, regardless of whether they cast a ballot or not.

PEGs in Florida must also comply with programming requirements not applicable to commercial TV; specifically, they must be on-air at least 10 hours daily, with at least five hours of non-reruns and excluding

"bulletin board" announcements. That's an especially heavy burden on educational and government access.

Elsewhere, Illinois' model cable franchise bill ensures that PEGs can't be "channel-slammed" into harder to find triple-digit, high-tier channels unavailable to basic subscribers lacking converter boxes. Other affected states should follow suit by adding legislative provisions if needed to prevent PEGs from being numerically separated from other basic service channels. In addition, cable franchise laws that allow for elimination of PEGs, as well as for minimum programming requirements, should be amended.

In the meantime, the national flagship for converging print, TV, and on-line news operations is apparently sinking in Tampa. Media General Inc. announced first quarter earnings declined earlier this year attributable to Florida operations. The company also recently offered buyouts and severance packages to Florida employees as a cost-savings measure. Three newly elected Media General board members have thus vowed to have the *Tampa Tribune*, WFLA-TV, and TBO.com properties sold, and perhaps they should be. Research by advocacy group Free Press shows cross-ownership tends to stifle competition. Other TV stations in the market often find they can't compete with a cross-owned TV station. So they cut their local news coverage up to 25 percent in favor of sports, weather, and entertainment.

Most people rely on TV for local and national news. Research also shows that cross-owned operations don't necessarily report more local news when combined than they would have separately. Nonetheless, the prospect of the *Tampa Tribune* ceasing publication is alarming in what is arguably the state's most competitive media market by virtue of its daily competition with the St. Petersburg Times, also facing downsizing.

Times Editor Paul Tash recently expressed cautious optimism that Florida newspapers, once called "the best under the sun" by Time magazine, will eventually recover from the downturn. Tash called for new measures providing greater citizen access to public records, and requiring local governments to provide time for public comment at all meetings. If he understood the situation, Tash might have called for more protection for PEGs as well.

There are many other reasons to be concerned about the effects on journalism of major corporations taking over U.S. and international media. Red flags abound. Examples include:

- *Chicago Tribune* Company CEO Sam Zell harshly criticizing the chain's Washington, D.C. bureau for not being a profit center and for covering the war in Iraq too much.
- *Wall Street Journal* business reporting being down 50 percent since Rupert Murdoch took over.
- Content analysis showing 60 percent of the news articles in better British newspapers being rehashes of public relations releases.

British author Nick Davies has a name for what's happening – "churnalism," as detailed in his book, "Flat Earth News." "In the book, I'm arguing that the commercialism of our corporate owners has undermined journalism in numerous ways," Davies said. "The most important single example is the structural change that they have inflicted on us, cutting back our editorial staffing and increasing our output and thus reducing dramatically the time that we have to find and check stories."

"Generally, this tends to reduce reporters to a passive role, recycling wire copy and PR material, often without really checking it. And in that context, it becomes much easier for intelligence agencies, government PR officers, et. al., to manipulate news coverage to serve their political interests," Davies said.

According to Davies, among by-products of churnalism is "flat earth news," or major stories the public believes are true when in fact they are as false as a flat Earth, like the Y2K scare or weapons of mass destruction in Iraq.

Broadcast media are not immune from the effects of churnalism. For example, as recently reported in the *New York Times*, retired military officers with close ties to the Pentagon and defense contractors are being booked for network TV interviews as 'independent' analysts without media checking into their backgrounds. The story followed other reports that the venerable CBS News, once among the most important powers that be in American media, was considering subcontracting assignments to CNN, a proposal former anchor Dan Rather said would drive him to drink.

But perhaps nowhere are the effects of Big Media more generally apparent than in the rise of Clear Channel Communications and the fall of commercial radio. In the new book "Right of the Dial," author Alec Foege contends that while Clear Channel perhaps didn't ruin commercial radio, it came pretty close. Once comprised of 2,000 radio stations nationwide, Clear Channel economized, centrally automating music and news, which Foege contends was good for investors for awhile but bad for citizens and American culture over time. Now some 1,200 stations strong, Clear Channel is successful, controversial, and reviled in the music industry, or as one reviewer wrote, "American commerce and culture gone mad."

What happened in Clear Channel markets was that local performers, who once got the air time needed on hometown stations to attract a following, got forced out in favor of music from corporate dictated play lists. Those same performers now rely upon lower power FM community radio or public access TV to showcase their talents.

Yet public access channels remain the most vulnerable PEG channels, especially in states with programming requirements that preclude reruns and bulletin board announcements in calculating air time for original content programming. Nonetheless, cable franchise agreements that allow for public access channels to be retained only by a majority vote of either all subscribers or respondents to a survey threaten all three PEGs, not just public access, especially if they are "channel slammed."

The situation is a far cry from the early 1980s and the advent of cable TV heralded by Ted Turner starting the then fledgling CNN against all odds. Experts said CNN was as doomed to failure as Al Neuharth's *USA Today*, also launched in the 1980s. Both CNN and *USA Today* not only succeeded but flourished. But media giant Time-Warner now owns CNN, and *USA Today* parent Gannett Co. Inc. is no longer the nation's only publicly traded daily newspaper chain.

Then, PEGs were touted as the great promise of cable franchise agreements with local governments because of their ability to provide the average citizen with greater opportunities to become active and involved in civic and public affairs. Overall, new video franchising framework must include stronger build-out requirements and consumer protections. Most anti-redlining provisions are insufficient to ensure low and middle-income consumers are not left behind. New franchising processes must sustain and support the continued viability of valuable local public services such as public access television, institutional networks, and consumer protection. Network neutrality should be a central component of any pro-competitive broadband policy in any given state.

In response to the Florida Consumer Choice Act of 2007, one of the simplest—yet most compelling—calls to action for local government access channels was made by Anthony Riddle, former Executive Director of the Alliance for Community Media.

"And when you, the Governor, or the Mayor of a small town, or a legislator needs to frame the debate for his or her constituents, won't it be important to have an unfiltered connection to your community?" Riddle asked. ■

***Mark A. Hart** is a statewide organizer of the Florida Media Coalition, a pro-media advocacy group based in Tampa.*

Crossing the Digital Divide

In-building Power Line Communications (PLC) delivers high-speed Internet access using a building's internal electrical wiring

By Ben Tuorto

While the Internet has enjoyed unparalleled use and innovation since becoming mainstream, and providing an added dimension to everyday life in America, the reality is that the Internet remains inaccessible to millions of Americans who are part of a growing "digital divide" in this country. This "digital divide" can be seen and felt on many different socioeconomic levels.

There has been widespread research in this area recently in an effort to size up the extent of the digital divide, prompting a number of awareness programs and mandates designed to eradicate it.

The research shows that one major area where broadband is underused is within Public Housing. There are several reasons for this, but for the sake of this article we'll focus on the issue of the 'last yard' and delivering Internet access into the end-user's home.

Addressing this 'last yard' issue will need to be a focal point of any strategy in order to fully realize Public Housing's Internet opportunity.

Often the backbone wiring infrastructure of Public Housing buildings are out-of-date and unsuitable for carrying High-Speed Internet Access (HSIA). As a result, Internet Service Provider's (ISPs) are unable or unwilling to remedy this situation by rewiring the entire complex which can become costly and intrusive.

A simple and cost-effective method for delivering HSIA is currently making waves among Public Housing officials, developers and building owners: it's called in-building Powerline Communications (PLC), *sometimes also referred to as Broadband over Power Line (BPL).*

PLC uses a building's internal electrical wiring to deliver a host of IP-based applications, all through existing electrical wiring, such as:

- High-Speed Internet Access
- Building-Wide Intercom
- Security/CCTV Surveillance
- Voice-over-Internet Protocol (VoIP)
- LAN Connectivity
- Wi-Fi access
- Energy-Management and other Smart Building Applications

Lower installation costs are achieved because the service is implemented over standard electrical lines, and in the case of Internet, access is available at every electrical outlet.

Other than a brief visit for equipment placement and testing, there is no need to enter residents' apartment units during the installation. Most importantly, installation costs are roughly half that of a cabled solution, and costs 25% less than a wireless solution. Network coverage is consistent and reliable throughout the entire building or complex.

PLC technologies come in a range of flavors - some better than others. For example, few are based on true networking platforms capable of supporting remote monitor and control of all network elements, multiple data solutions (including VPN) or encryption capabilities, which ensures that PLC network users cannot see other users on the network.

By implementing and utilizing PLC technology in residential, commercial, or similar properties, Public Housing officials, developers, building owners, and managers have the ability to provide a direct replacement for costly building-wide intercom and security systems with door-release functionality activated by residents through their phone. In addition PLC can provide reliable & ubiquitous transport for the monitor, control, and energy usage throughout a building, reducing their energy consumption.

The same PLC technology is uniquely suited for Multi Dwelling Unit residential & commercial properties that need cost-effective broadband Internet and network access quickly and without disruption, including:

- Public Housing
- Government Buildings
- Schools
- Apartment Buildings
- Hotels

Additional Benefits of PLC include:

- **Low Cost** – Significantly less expensive than rewiring a building
- **Quick Installation** – Completed from hours to days, without construction mess or resident disruption
- **Secure** – Data is encrypted and secure from outside intrusion
- **Hybrid** – Delivers wired, wireless or a hybrid solution
- **Convenient** – Network access at every electrical outlet in every room
- **Flexible** – Supports any device or application using Internet Protocol
- **Robust** – Remote monitoring and management
- **Compliant** – FCC Part 15, UL60950 Listed, and CE approval
- **Plug-and-Play** – Easy to connect to the Internet without drivers or software

Power Line Communications represents a robust networking platform that protects your investment by providing for today's technologies and expanding for future technologies and applications, with many key benefits, virtually future-proofing your facility. ■

***Ben Tuorto**, VP Sales for MST-NuVisions, has over 30 years of Computer/Internetworking/ Telecommunications industry experience in sales with leading network equipment manufacturers for systems integration, networking, business development and customer service. Mr. Tuorto has had direct experience with the implementation of Powerline Communications networks throughout the United States. Before joining MST-NuVisions, Mr. Tuorto's background has included the development & implementation of numerous successful sales programs and he has held strategic sales and management positions with industry leaders including Telkonet (the leading in-building PLC Manufacturer), Nortel Networks, Fujitsu, Digital Equipment Corporation and several high tech startups.*

MI-Connection: What Some Communities Will Do For Decent Broadband

How a group of small North Carolina towns changed their broadband destiny.

By Kyle Hollifield

The truth is out. Just because you live in America doesn't mean you have access to adequate broadband technology.

The Lake Norman area in the Piedmont area of North Carolina is a good case in point.

Prior to 2008, getting Internet connections and reliable, quality cable service were daily techno struggles for residents of the towns of Davidson, Mooresville and Cornelius, all located about 30 miles north of Charlotte. Random outages, poor customer service and limited network capability – with no upgrades in sight – were the order of the day. But all of that changed when the town boards and Mecklenburg County Commission stepped in and voted to own the local cable and Internet system that served that area.

"The problem was the system then had only 625 megahertz of bandwidth, when the industry standard was 862," says Evan Webster, who, at the time, was a board member for the town of Davidson. "I think people were resigned to having a bad experience because after we took over, there was all this pent-up service demand. They finally realized someone was there who would listen to them."

According to Webster, the system in the Lake Norman area had a long history of "being duck-taped and patched together," the result of the cable-Internet system being bought out or transferred repeatedly during the 1990s.

In 1998, Davidson along with nearby Huntersville, Cornelius, Mooresville and Troutman, as well as the unincorporated portion of Mecklenburg County fought back by creating a "watch-dog" group called the Mecklenburg-Iredell Consortium.

When the local telecom franchise passed from Prestige Cable to Adelphia in 2000, the consortium stepped in and added a "right of first refusal" clause to the transaction – which meant the group would have first option to buy the system if it came up for sale again.

That chance came just two years later, when Adelphia filed for bankruptcy and entered into an agreement to sell the system to Time Warner in 2005.

It was a chance for the municipalities to engage in serious negotiations, according to Webster. "We went to Time Warner and said, 'Look we've got this right of first purchase, but we're not going to exercise it if you will fulfill the terms of the franchise agreement and provide us with a fiber backbone necessary for governmental use."

But the cable leader was unmoved. Not only was the company unwilling to keep any promises related to upgrades but it also chose to fight the consortium's right of first purchase.

To make a long story short, the municipalities, which, by this time, consisted of four municipal entities, challenged the take-over of the cable system by Time Warner and were eventually granted the right to purchase the failing system for $52 million – a move that has proven to be both strategic and savvy.

In 2007, the towns branded their newly acquired cable-Internet system "MI-Connection" (pronounced "My Connection"), using the acronym MI, which stands for Mecklenburg and Iredell – the two counties where the towns are located. And they contracted with a network management firm called BVU FOCUS to help them wade through the regulatory red tape of municipal broadband start-up and operations.

An offshoot of Bristol Virginia-based BVU OptiNet – which was the first municipal electric company in the nation to build and manage its own all-fiber-optic network – FOCUS was created to provide telecom consulting, management and operations services to other municipalities. The acronym stands for Finding Opportunities for Communities Throughout the United States. MI-Connection was the company's first customer.

"We'll continue with the hybrid fiber system. Our new network design actually gives us flexibility in the kinds of services that we can provide to customers."

Evan Webster, chairman of the MI-Connection

"Everyone feels we made the right choice," says Webster of the consortium's decision to enter the telecommunications business. But he also qualifies his response by acknowledging that MI-Connection had a "unique situation" in that it already had several thousand subscribers at startup – almost 16,000 of them.

Now chairman of the MI-Connection board of directors, Webster says that the more popular trend in municipal broadband deployment is to build a system from scratch. "That's what BVU did, and that's what both Salisbury and Wilson, N.C., are doing as well," he points out. "While they started their systems and then went out to get customers, we bought ours and now have to go out and build the system. The timeline is flip-flopped."

Although MI-Connection still operates using hybrid fiber-coax cable, the network was upgraded in 2008 to 862 Megahertz, and since last May, 37 new channels have been added to the programming.

"We'll continue with the hybrid fiber system," Webster confirmed, noting that MI-Connection now has the capability of offering fiber-to-the-premises if customers want it. "Our new network design actually gives us flexibility in the kinds of services that we can provide to customers."

Having to continually upgrade existing hybrid systems to meet ever-growing bandwidth demands is one of the biggest challenges facing America today.

Depending on which list is consulted, the United States is ranked between 12th and 25th for global broadband rankings. In terms of fiber-to-the-premise growth, our country ranks a distant eighth, being easily out-paced by major Asian countries such as South Korea, Hong Kong and Japan.

While this issue may pale when compared to other more pressing national problems, such as the fight on terrorism or a faltering economy, it is actually indirectly connected to them all. If our communications infrastructure is not up to speed, we are doomed to lag behind on other issues as well.

In fact, a study conducted by the Brookings Institution, an independent research and public policy institute, bears out this cause and effect. Based on current American broadband statistics, the institute predicts that our nation's lag in providing universal broadband at affordable prices and at higher bandwidths could lead to as much as $1 trillion in losses in economic productivity over the next decade.

In a *New York Times* article published August 2008, writer John Markoff issued an even more serious wake-up call – that Internet traffic, which once flowed through the United States from other countries, is now circumventing us. Markoff quotes Earl Zmijewski, who heads a prominent Internet data services firm that monitors connections between Internet

providers, as saying: "The U.S. telecommunications firms haven't invested. The rest of the world has caught up. I don't see the AT&Ts and Sprints making the investments because they see Internet service as a commodity."

While Verizon is one telecom provider that has aggressively deployed fiber-to-the-home (FTTH) service, most of the other major telecos are still grappling with combination hybrid-copper infrastructures, particularly in rural areas and small towns where customer bases are small.

Because these companies aren't investing in optical fiber lines, the global data network that was once a competitive advantage for the United States "is now increasingly outside the control of American companies," Markoff notes.

A big part of the problem, says FTTH Council President Joe Savage, is that the United States doesn't have a national strategy through regulatory and policy frameworks for moving into next-generation broadband.

"While America's FTTH providers like Bristol Virginia Utilities are moving boldly and aggressively to wire up our own country with future-proof fiber," he says, "there are still too may obstacles that are the result of the old regulatory system. We're not asking for the government's help in deploying fiber to the home; our members are perfectly capable of doing it on their own. But we do need that strategic framework to ensure that the pecuniary interests of legacy providers do not stand in the way of our industrial competitiveness."

According to Jim Baller, the Baller Herbst Law Group attorney noted for defending the rights of local governments and utilities to build and operate telecommunications networks, between 14 and 17 states currently pose barriers to public communications initiatives of some kind.

BVU FOCUS is a network management firm the towns contracted with to help them wade through the regulatory red tape of municipal broadband start-up and operations.

"About half of these laws apply to broadband-based initiatives," he says. "The laws of the great majority of states are either positive or neutral."

Where state laws are silent or neutral, it is necessary to determine whether the state is a "Dillon's Rule" state, which resolves uncertainties against local power, or a "Home Rule" state, which resolves uncertainty in favor of authority – or something in between. All of this is to say that even when states don't put up literal barriers to municipal broadband, the waters still tend to be murky and intimidating.

Baller cites three major impediments to the proliferation of next-generation networks in America:

- The lack of vision of America's top government and corporate officials, who should be viewing next generation networks as a strategic asset for America, as the leaders of our Asian and European competitors do;
- The lack of a broad national consensus on the urgency of our need for such networks; and
- The shortage of attractive bandwidth-rich applications that will cause large numbers of ordinary Americans to demand high-capacity networks, thereby breaking the chicken-or-egg financial barrier to investments in next generation networks.

In the case of the three Lake Norman towns in North Carolina, their time had come. The people rose up, demanded something better and got it.

For the approximately 29,000 other cities still out there that aren't positioned for the 100 Mbps service that Internet technologists say Americans will be needing by 2015, there's work to do.

For more information, go to *www.baller.com/comm_broadband.html, www.ftthcouncil.org, or info@bvufocus.com.* ■

***Kyle Hollifield** is vice president of marketing and business development at Bristol Virginia Utilities (BVU), where he oversees BVU FOCUS, a unit of BVU OptiNet that provides advanced telecom consulting and management services to other municipal entities seeking to launch broadband networks. Before joining BVU, Hollifield co-founded KS Telecom Inc., a successful West Palm Beach, FL telecommunications company that was restructured in 2007 as Atlas Telecom Product Inc.*

Prince George's County, Maryland I-Net

By Dr. Joe Rossmeier and Maryanne Anthony

Communities United…..Succeed! This was the early battle cry of the Prince George's County, Maryland I-Net. Ten years of hard work on the unique project brought national recognition by the NATOA Board of Directors by way of the 2008 Community Broadband Network of the Year Award. The network is a collaborative partnership between the County, sixteen municipalities and Comcast Cable, and in the words of the NATOA Board represents "An exemplary partnership among public entities to meet public safety, educational, e-government, and public health needs."

History

In the mid 1990s, Prince George's County and participating municipalities entered into a Cable Franchise Agreement with Jones Communications of Maryland, Inc. In 1998, Comcast completed the acquisition of Jones Communications thus assuming responsibility for completing the requirements as defined in the Franchise Agreement.

The functional purpose of the network is to connect authorized users including specific public, educational, and governmental facilities in accordance with the Cable Franchise Agreement. Connectivity via the network offers participating communities a communication vehicle to reduce costs for services otherwise provided through commercially leased lines.

The Cable Franchise Agreement required construction of an I-Net infrastructure and connectivity to 174 sites. Construction of the network began by the fourth quarter of 1999 and followed a fairly aggressive completion schedule. Within two years of the starting date, twenty-five percent was completed. Completion of the network occurred nearly three years later in 2002.

The governance model is based on a unique representation of participants in all facets of operations (i.e. administrative, technical, and policy-oriented). The governance structure is specified and ratified in Prince George's County Institutional Network Bylaws that have been adopted by each of the authorized users.

Governance Structure

There is no shortage of government I-Nets around the country. The Prince George's County I-Net is unique in the governance structure which consists of the I-Net Committee, an Executive Committee, and two workgroups.

Prince George's County is the first in the country to have an I-Net governing structure that includes oversight by all member governments. Governance is exercised through the I-Net Committee on which Prince George's County and each participating municipality are members. Each member government has one vote and decisions are made by majority vote. The full I-Net Committee adopts an annual budget and assesses annual fees. Operational management of the I-Net is delegated to the I-Net Executive Committee on which voting members from the county (including public schools, community college, parks and planning and public libraries) and small, medium, and large population municipalities serve along with non-voting advisory members from the public schools and the policy and technical workgroups, and various ad hoc task forces.

I-Net Committee

Representatives from each of the participating franchisors and County Government comprise the I-Net Committee. The committee is responsible for the administration, maintenance and financing of the I-Net resource.

Executive Committee

The Executive Committee consists of sixteen *voting* members. Eight are chosen by Prince George's County, one each is chosen by the Cities of Bowie, College Park, Greenbelt, and Laurel, and four are chosen by the Prince George's County Municipal Association (PGCMA) to represent the remaining communities. The Executive Committee has three additional advisory seats comprised of non-voting members from the Technical and Policy Workgroups as well as the Board of Education, with the potential for additional seats from the Board of Education and/or Prince George's Community College.

Ad-hoc task forces (Budget, Project Information, Public Safety, Emergency Response, and Security) support the Executive Committee.

Policy Workgroup

It is the mission of the Policy Committee to support the work of, and render advisory help to, the Intergovernmental Network Executive Committee. As part of this mission, the Policy Committee will conduct long range planning, develop rules, regulations and procedures for the governance of the I-Net system, review the rules, regulations and procedures adopted by the Executive Committee on a periodic basis, recommend enforcement actions, review contract performance and generally provide other organizational support as is requested by the Executive Committee. The Policy Committee will work with the Technical Committee in fulfilling this mission.

Technical Workgroup

It is the mission of the technical committee to support the work of, and render technical advice and recommendations to, the Intergovernmental Network Policy Committee. The committee recognizes its role as a corporate citizen within the local, state, national, and international communities. It remains sufficiently flexible not only to expand and enhance current advanced communications, video, print, and mail services but also to pursue aggressive development of new services. The Technical Committee will work with the Policy Committee in fulfilling this mission.

Technical Overview

The network utilizes a fiber backbone inter-connecting five core sites over redundant bidirectional routes constructed using single-mode fiber. The network is designed so that each authorized user can originate and receive fully interactive video, data and voice signals. The participating communities have the indefeasible right of use of the I-Net which is shared with other authorized users.

The fiber optic plant has been designed, installed and inspected in accordance with industry standards. Integration between the I-Net and the existing Prince George's County Government Network is centrally linked at the Largo Government Center to provide connectivity between the remote municipal and county authorized user sites. The I-Net is constructed to support the capability for an extensive variety of voice, data and other services.

Physical space has been reserved in Comcast hub facilities for the strict purpose of housing I-Net related equipment. As stated in the Cable Franchise Agreement, Comcast will make reasonable efforts to provide an appropriate amount of assigned space for all equipment where it can readily be accommodated. In compliance with the procedures and conditions as defined in the Cable Franchise Agreement, Comcast maintains, repairs and replaces fiber or

equipment on Comcast's side of the demarcation point. It is the responsibility of the authorized user to purchase and maintain the equipment on the authorized user side of the demarcation point.

Public-Private Partnership

The partnership with Comcast is a vital component to the on-going success of the Prince George's County I-Net. Collaboration and resources are shared not only between participating members, but with Comcast as well. In this effort, true economies of scale are realized by all parties.

Beyond Prince George's County

Expanding the resources beyond the County borders has become a reality for the Prince George's County I-Net within the last year. Connectivity has been established to the State of Maryland's network (Network.Maryland) providing Prince George's County I-Net participating communities' access to the rich resources of the state government. High speed Internet bandwidth and access to data residing on State agency servers are among the benefits.

Prince George's County is located within the National Capital Region of the country and thus a participant of the area's NCRnet. This regional fiber network is currently being constructed and will eventually provide participating local governments access to a regional public safety wireless initiative, geographical information systems data, CAD-to-CAD interoperability and an Emergency Management videoconferencing network.

Future Initiatives

There are many projects on the near and long term horizon for the Prince George's County I-Net. Just a few include private videoconferencing and Voice-over-IP (VoIP) telephony during major regional events, public safety employees sharing real-time data with other departments and agencies, public notification and warning systems, e-mail, web hosting, video streaming, and many other partnership projects to leverage economies of scale for the participating communities.

The future of the Prince George's County I-Net is exciting and limited only by the imaginations of the dedicated public servants striving to provide excellent services to the citizenry.

For more information on the Prince George's I-Net go to www.pginccc.net. ■

***Dr. Joe Rossmeier** is Vice President of Technical Operations for Prince George's Community College and serves on the I-Net Executive Committee and Project Information Task Force.*

***Maryanne Anthony** is President of Integrity Based Solutions, LLC and Town Manager for the Town of North Brentwood. Mrs. Anthony serves as the I-Net Project Manager.*

MAKING THE RIGHT CONNECTIONS

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Sharing Our Community Culture with the World

By Sally Koenecke

The impact or value of local programming is not always easy to evaluate. However, in the March 10, 2008 edition of *Broadcasting & Cable* in the article, "Local Stations Multiply," author Allison Romano writes about the advent of digital channels and a move to local programming. One identified executive of a broadcast station group is quoted in the article as saying, "These channels need to be unique offerings that people see as a destination television they can't get anywhere else." Sound familiar? Community television has been providing destination television for over twenty-five years as those of us who have worked in this field can attest.

We may ask the question, are emergent technologies becoming catalysts for programming value? Is it allowing programming to move in directions that have greater perceived cultural (and economic) value, in this case defined as "unique local offerings?" There are many directions this argument could take.

With digital technology we see broadcasters move to localism, but at the same time traditional community programming is utilizing IP technology to move towards globalism. In community television we understand that value in local unique offerings is not a new perception. With the advent of IP technology we are beginning to export our local content globally and countries around the world are gaining an insight into our American culture.

"The success of local television is that it can change attitudes by promoting people who know each other. It can get people out and doing things and talking with one another. Having community locations that people know, local recognition. This is huge."

We now have the opportunity to share with the world our city government representation, non-profit organizations, senior citizen centers, chambers of commerce, public schools and all those unsung heroes (not the ugly American) who shape our American culture. The building blocks of our United States democracy are making their way into the homes of many countries around the world.

To illustrate this evolution, Mario Cortolezzis began producing local programming in 2007. He became a reservist with the Minnetrista Public Safety Department and got involved in a public safety cable program called "Roll Call TV" produced by a group of reservists. Mario grew up and lived in many places in the world including Canada and Italy and has experienced cultures other than American, but no where did he have direct access to the media.

Thus far the international impact is that members of his family can watch his productions in a remote area of Canada 300 miles from civilization. His parents in Italy get up at 1:00 AM to watch "Roll Call TV" and his cousins in Italy watched "Teen Talk Live!" another of Mario's productions, as it was streamed live on LMCC Channel 12 (Lake Minnetonka Communications Commission). Some of these programs are now offered "on demand" on the LMCC website so they can be watched at the viewers convenience. The reaction of these viewers to the idea that programming is being produced in hundreds of American communities has been one of fascination.

As a community television producer, his own multi-cultural background including family and community values and a desire to have

Mario Cortolezzis

an impact on other people motivated Mario Cortolezzis.

He said in Europe, families are often more closely associated. In an interview, Mario shared, "The success of local television is that it can change attitudes by promoting people who know each other. It can get people out and doing things and talking with one another. Having community locations that people know, local recognition. This is huge." Mario is now branching out from "Roll Call TV" and producing other programs because he says, "The police show is very important to me, but I also want to do shows that reach out to other families about subjects close to their hearts." He believes his personal culture might be considered more "European American" and would like to bring a "different way" of producing that allows for a cultural mix and diversity of ideas.

Among the programs that Mario has produced are three "Roll Call TV" episodes, four "On the Reds," a spin-off of "Roll Call TV," and a live call-in show titled "Lawline," for residents to phone in questions to police officers. Mario feels that this type of show is pushing the envelope because of its interactivity and potential for wider participation (global with the internet). Another recent endeavor was a live program, "Teen Talk Live!" in which a studio audience of teenagers directed questions to a panel of police officers with questions such as, "If a bully is picking on me and I defend myself, can I get in trouble?" and "If I was in a car or house where people were drinking or using drugs and I had not, would I be accused of anything?" Mario also collaborated with LMCC Production Manager, Chris Vogt, on a program called "National Night Out" for the Minnetrista Public Safety Department. Mario credits Chris for teaching him much of his production acumen.

Mario's most current program is receiving national attention. Produced in conjunction with Sergeant Mike Kokesh of the Minnetrista Public Safety Department, this program on autism is titled, "Autism Special, Where is the Justice?" This program was inspired by a situation in which police officers were not certain how to work with a child with autism in an emergency. Mario's son has autism and he knows that autism can often affect a person's ability to communicate. The hour-long program interviews parents of children with autism, schools and law enforcement and provides ideas on effective ways to communicate with children with autism. This program is being distributed nationally to other police departments. "Autism Special, Where is the Justice?" has received media attention with articles in several newspapers and with requests to Mario for interviews with numerous broadcast television stations in the Twin Cities including KARE 11's "Showcase Minnesota." April is

National Autism Awareness Month and when the national organization Autism Speaks heard of Mario's program on autism, the word spread to NBC and on April 25 Mario's story and the program were featured on the NBC "Today Show." Mario is excited that an awareness of autism can be generated in many other countries via the synergism of cable access and internet streaming. The ultimate desired goal is to expand awareness to improve the lives of people with autism and other disabilities.

Mario's story illustrates how acting locally can have an impact nationally and globally with the advent of IP technology. All of these public safety programs have been carried on the Lake Minnetonka Communications Commission PEG Channel 12 of the incumbent cable provider, Mediacom. This channel is also streamed as it airs on the LMCC website, lmcc-tv.org. The LMCC began streaming and utilizing IP technology in 2006 as a vehicle to promote and enhance our communities' and producers' programming goals. It seems to be working! ■

***Sally Koenecke** is Executive Director of the Lake Minnetonka Communications Commission a joint powers commission of 17 cities in the Twin Cities area and the President of MACTA, the Minnesota Chapter of NATOA. Sally has worked in community television for 24 years. She holds an M.Ed. in Education and produced a program on disability topics called "Diverseability" for 4 of those years.*

REEL TIPS

Fresh Ideas for Programmers

The internet is a great place to find production resources, tips and story ideas. Here are a few of CCM's favorites:

Do you produce a search about the rich history in your community? In addition to searching your local library and historical society consider the following websites:

- *www.archives.gov/research/arc* (This is a search page for the Archives both photo and video library. Some of the photos are digital and can be downloaded)
- *www.loc.gov/library/libarch-digital.html* (similar to National Archives: great data base and some of it is down-loadable online)
- *www.usgs.gov/newsroom/multimedia.asp* (public domain photos)
- *http://images.fws.gov* (photos) US Fish & Wildlife Service
- *www.nps.gov/pub_aff/imagebase.html* National Park Service (photos)
- *www.public-domain-photos.com*
- *http://ourmedia.org/learning-center/images/free-photo-sites*

As budgets get tighter, training sometimes goes out the door—along with those who do not keep up with industry. So think about joining an on-line creative group or taking on-line tutorials:

- *www.fcptips.com*
- *www.support.apple.com*
- *www.macalert.com*
- *www.forums.creativecow.net* This site has forums on Adobe After Effects, Adobe Final Cut Pro, Adobe Final Cut Server, DVD authoring, web streaming – audio/video, SANetworks and Podcasting – just to name a few. The site also offers tutorials, newsletter, news and blogs.

Another way to keep abreast of the rapid changes in our industry is to read articles on the internet.

- *www.videomaker.com*
- *www.televisionbroadcast.com* (two minute drill)
- *www.pcmag.com*

Funding for music can also present a challenge financially. While there are many sites, here are a few CCM favorites:

- *www.modernbeats.com*
- *www.stockmusic.net*
- *www.neosounds.com*
- *www.cssmusic.com*
- *www.musicbakery.com*

Don't forget to visit these sites for story ideas and additional resources:

- *www.natoa.org*
- Your local and state government
- K-12 and higher education
- Chambers of Commerce
- County and state fairs
- Local and state convention and visitor centers
- Consumer protection
- Cultural sites

Happy surfing!

Submitted by CCM staff, Montgomery County, MD

If you have suggestions for this column, please send them to: donna.keating@montgomery countymd.gov

Is It the End of the World as We Know It?

The Future of PEG Contributions in the Aftermath of *Alliance for Community Media v. FCC* and the Federal Communications Commission's Franchising Orders

By Richard D. Treich and Stephen J. Guzzetta

Since the enactment of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 et seq. (the "*Cable Act*"), there has been a 5% federal statutory cap on the amount of franchise fees a cable operator can be compelled to pay from the operation of its cable system.[1] This cap arguably limits the amount of public, educational and government ("PEG") access operating support that can be *required* by a franchising authority from a cable operator, particularly if the franchising authority is charging a franchise fee that is equal to 5% of a cable operator's annual gross revenues.

Nevertheless, many local franchising authorities and cable operators entered into franchise agreements that tacitly or explicitly permitted PEG financial support to be used for operating expenses. For many years, this practice has largely gone unchallenged during the franchise renewal process, due primarily to the fact that the cable industry could pass all franchise-related costs through to subscribers with impunity. However, with the increase in multichannel video competition from the telephone industry and the recent FCC orders addressing franchise fee requirements in the context of local franchising, the historical treatment and understanding of PEG operating support payments may be in jeopardy. Indeed, cable operators may ultimately decide to unilaterally offset PEG operating support payments against franchise fee payments based on their interpretation

of the federal 5% franchise fee cap. Fortunately, there are still many things that a local franchising authority ("LFA") can and should do to continue to receive its negotiated PEG operating support payments.

The FCC's Pronouncements Concerning PEG Support Payments

The FCC recently released two orders[2] which, in the course of implementing Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), also interpret the franchise fee limitation set forth in Section 622(b) of the *Cable Act*, 47 U.S.C. § 542(b), the federal definition of a "franchise fee"[3] and certain exceptions to that definition, which are delineated in Section 622(g) of the Cable Act, 47 U.S.C. § 542(g). The *First Report and Order* was affirmed by the United States Court of Appeals for the Sixth Circuit in *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008).[4] The *Second Report and Order*, which pertains to incumbent cable operators, remains on appeal at the time this article was prepared in September 2008.

Both orders addressed whether certain types of PEG access support payments should be considered franchise fees that count towards the federal 5% franchise fee cap in Section 622(b) of the Cable Act. This is significant because the FCC has made clear that it does not believe cable franchise fees can exceed 5% of gross revenues derived from the operation of a cable system to provide cable service. Specific types of payments, however, are not considered franchise fees and are not subject to the federal franchise fee ceiling.[5] With regard to PEG financial support mechanisms, Section 622(g)(2)(C) of the *Cable Act*, 47 U.S.C. § 542(g)(2)(C), states that the definition of a "franchise fee" does not include any "capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities." The *First Report and Order* narrowly construed this exception to encompass only "those [capital] costs incurred in or associated with the construction of PEG access facilities."[6] According to the FCC, "[t]hese costs are distinct from payments in support of the use of PEG access facilities. PEG support payments may include, but are not limited to, salaries and training. Payments made in support of PEG access facilities are considered franchise fees and are subject to the 5 percent cap."[7]

In the *Second Report and Order*, the FCC stated that its "findings interpreting Section 622 should apply equally to incumbent cable operators and new entrants"[8] This included the FCC's conclusion that "payments made to support the operation of PEG access facilities are considered franchise fees and are subject to the 5 percent cap, unless they are capital costs, which are excluded from franchise fees under Section 622(g)(2)(C)."[9] At the same time, however, the FCC determined that:

> fr anchise agreements involve contractual obligations and … that some terms may have been implemented as part of a settlement agreement regarding rate disputes or past performance by the franchisee. As a result, we believe that the facts and circumstances of each situation must be addressed on a case-by-case basis under applicable law to determine whether our statutory interpretation should alter the incumbent's existing franchise agreement. This Order should in no way be interpreted as giving incumbents a unilateral right to breach their existing contractual obligations.[10]

Thus, while the *Second Report and Order* itself may not explicitly permit incumbent cable operators to abrogate existing PEG support commitments, it will not necessarily prevent the cable industry from attempting to treat non-capital PEG payments as franchise fees, and preemptively offsetting such payments against franchise fees on other legal grounds or seeking to modify/reduce franchise fee requirements pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and compliance with law provisions in a franchise agreement.

Approximately eight years prior to the *First Report and Order* and the *Second Report and Order*, the FCC addressed how PEG access payments

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[1] The statutory cap replaced Federal Communications Commission ("FCC") rules governing franchise fees. *See, e.g.*, 47 C.F.R. § 76.31 (1984).

[2] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007) (*"First Report and Order"*) and *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 22 FCC Rcd 19633 (2007) (*"Second Report and Order"*).

[3] 47 U.S.C. § 542(g)(1).

[4] NATOA and other national organizations have sought an en banc review of the Sixth Circuit's decision.

[5] *See, e.g.*, Section 622(g)(2)(A)-(E) of the Cable Act, 47 U.S.C. § 542(g)(2)(A)-(E).

[6] *See* the *First Report and Order* at ¶ 109 (citing to H.R. Rep. No. 98-934, at 19 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4656).

[7] *Id.* (citing to Cable TV Fund 14-A v. City of Naperville, 1997 WL 433628 (N.D. Ill. 1997) at 13 and *City of Bowie, Maryland*, 14 FCC Rcd 7675 (1999), *as clarified at* 14 FCC Rcd 9596 (1999).

[8] *Second Report and Order* at ¶ 11.

[9] *Id.* (citing to the *First Report and Order*, 22 FCC Rcd at 5150-51).

[10] *Id.* at ¶ 19.

should be treated under Section 622 of the Cable Act in response to a request from the City of Bowie, Maryland.[11] In the second of two *City of Bowie, Maryland* letter rulings, the FCC opined that:

> [t]he legislative history [of the Cable Act] explains that Subsection 622(g)(2)(C) establishes a specific provision for PEG access in new franchises. In general, this section defines as a franchise fee only monetary payments made by the cable operator, and does not include as a "fee" any franchise requirements for the provision of services, facilities or equipment. As regards PEG access in new franchises, payments for capital costs required by the franchise to be made by the cable operator are not defined as fees under the provision. These requirements may be established by the franchising authority under Section 611(b) or Section 624(b)(1). In addition, any payments which a cable operator makes voluntarily relating to support of public, educational and governmental access and which are not required by the franchise would not be subject to the 5 percent franchise fee cap. See H.R. Rep. No. 98-934 at 65 (1984) reprinted in 1984 U.S.C.C.A.N. 4702; see also 1984 U.S.C.C.A.N. at 4753 (Colloquy between Rep. Wirth and Rep. Bliley). (Emphasis added).

As with the FCC's recent orders, the FCC's City of Bowie, Maryland decisions left many questions unanswered and included language that is capable of multiple interpretations. One such question is whether PEG access payments used to purchase PEG-related equipment are capital costs which are excluded from the federal definition of franchise fees. Fortunately, both the Sixth Circuit and the FCC have apparently concluded that Section 622(g)(2)(C) includes PEG equipment costs/payments, which means those costs/payments should not apply towards the 5% franchise fee cap.[12] Consequently, as discussed below, LFAs should consider how PEG access payments are characterized in their franchise documents and how they are actually used and accounted for in official records.

The Interplay Between the Five Percent Federal Franchise Fee Cap and PEG Access Support Payments

After a careful reading of Section 622 of the *Cable Act*, the *First Report and Order*, the *Second Report and Order*, the second *City of Bowie, Maryland* decision and *Alliance for Community Media v. FCC*, it is clear that the stated type and actual use of PEG access support payments included in a franchise agreement (e.g., capital and/or operating support grants and fees), as well as the circumstances under which the payments were established, must be evaluated when determining whether the federal 5% franchise fee cap has been exceeded and whether an operator has a right to offset certain PEG payments against franchise fee payments. First and foremost, a LFA should understand that the franchise fee requirement in its franchise documents may very well be less than the federal 5% franchise fee cap, even if the documents include a 5% franchise fee. This is because the federal franchise fee ceiling is 5% of a cable operator's total gross revenues derived from the operation of its cable system to provide cable services, whereas specific franchises typically exclude certain revenue streams from the gross revenues base upon which franchise fees are calculated. For example, if a local franchise agreement excludes advertising sales revenues from its definition of gross revenues for franchise fee calculation purposes that does not mean that those same advertising sales revenues are excluded when determining the 5% franchise fee cap under the Cable Act. Therefore, before a LFA can determine if a cable operator's PEG operating support payments exceed the federal 5% franchise fee ceiling, the LFA needs to compute the *total amount* of franchise fees permitted under the *Cable Act—not* under the franchise agreement. The difference between what a LFA could charge under the *Cable Act* and what it actually charges under its franchise documents provides "headroom" that must be taken into account before any franchise fee offset should be permitted.

By way of illustration, assuming that gross advertising revenues eliminated from gross revenues under a franchise agreement were $100,000, then there is an additional $5,000 (.05 x $100,000) in franchise fees that could be counted towards the 5 percent federal franchise fee ceiling (*i.e.*, there is $5,000 worth of "headroom"). Accordingly, if a LFA received PEG operating support in the amount of $4,000, a local cable operator would not legitimately be able to offset that amount against franchise fees because the full 5% cap under the *Cable Act* would not have been reached.

[11] *City of Bowie, Maryland*, 14 FCC Rcd 7675 (1999) *as clarified in* 14 FCC Rcd 9596 (1999).

[12] *See Alliance for Community Media*, 529 F.3d at 785 (the FCC "concedes that its definition of 'capital costs' covers the expense of equipment as long as it is 'incurred in or associated with the construction of PEG access facilities . . .') and the Statement of Monica Shah Desai before the U.S. House of Representatives Subcommittee on Financial Services and Committee on Appropriations at 3 (Sept. 17, 2008) ("In Section 622(g)(2)(C), Congress specifically excluded from the term 'franchise fee' any '*capital costs* which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.' Accordingly, capital cost payments, such as facilities and equipment, are not subject to the 5 percent franchise fee cap, while noncapital costs, such as salaries and operating costs, must be included in calculating the fee.").

Capital vs. Non-Capital PEG Access Payments from Cable Operators

After a LFA determines what its actual federal franchise fee cap is, then it can begin the process of determining what PEG payments are properly considered "capital" versus non-capital in nature. Except for a short discussion in the recent *Alliance for Community Media v. FCC* decision,[13] there is little definitive guidance as to what constitutes a "capital" cost versus a "non-capital" cost for purposes of determining what types/uses of PEG support payments can be correctly considered franchise fees under Section 622(g)(1) of the *Cable Act*, 47 U.S.C. § 542(g)(1).

Due to the uncertainty in this area, LFAs should not overreact to overly simplistic assumptions regarding what is a capital versus non-capital cost. For example, if a PEG operation cablecasts and maintains the official archives of local city council meetings, could the costs to produce and store those official meetings be considered a capital expenditure? Typically, costs that are expended by an organization that have a life of more than one year (or one accounting period) can be considered a capital asset. In many cases, a PEG operation may have expensed these activities rather than capitalizing them as an asset of the PEG access facility. Thus, the internal accounting policies employed by a PEG access facility could understate the actual capital expenditures of the PEG operation. For example, if a PEG facility only capitalizes expenditures that exceed $1,000, there could be many PEG expenditures that have useful lives greater than one year but were not capitalized as an asset because they were less than a threshold amount. It is therefore evident that how a LFA treats PEG access-related expenses in its books and records could have a significant impact on whether the PEG funding used to pay those expenses could be considered franchise fees that count towards the federal franchise fee cap. If a significant amount of PEG funding received from a cable operator is used for and booked as operational costs, a local franchising authority leaves itself exposed to the argument that such funding is a franchise fee that should be deducted from general franchise fee payments, particularly if the local franchise fee is set at 5% of gross revenues.

Next Steps

LFAs need to carefully consider how the PEG access payments they receive from their cable operators are characterized in their franchise documents and how they are actually used. The most important thing to do is to calculate the maximum cable service franchise fee amount a LFA could charge under the *Cable Act* (i.e., 5% of all a cable operator's gross revenues derived from the operation of its cable system to provide cable service), and compare that amount to what is actually being charged and collected. This may entail conducting a franchise fee review and/or requesting detailed financial records from cable operators. Once armed with this information, a LFA should be able to determine if it has any franchise fee "headroom" that can be used to prevent any franchise fee offsets by a cable operator or at least minimize the amount of such offsets. In addition, any franchise fee underpayment that is discovered as part of a franchise fee review could likewise be applied to any franchise fee offset sought by a cable operator.

LFAs and PEG facility operators also need to review their internal accounting policies and future asset purchases. In this regard, careful attention should be paid to how PEG access grants and payments received from cable operators are utilized and categorized for accounting purposes. In the current regulatory environment, LFAs and PEG facility operators should work closely with their accountants to ensure that capital expenditures are not understated. Moreover, LFAs and PEG facility operators may wish to consider whether operating costs can be paid from general franchise fee accounts instead of from PEG access payments. To the extent possible, PEG access payments received from cable operators should be used to acquire assets that are "capital" in nature. ■

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[13] *Alliance for Community Media*, 529 F.3d at 785.

Evolution of Streaming Methodology

By Bryan R. Halley

In 1995, Niklaus Wirth made popular the idea that "software is getting slower more rapidly than hardware becomes faster." This became known as Wirth's law and his law has become indicative of why the methodology behind streaming video has evolved into an industry dominated by the Flash format and its simplicity.

The Flash format has become the format of choice from vendors such as YouTube, Google Video, MySpace, ABC and NBC/Universal. However, Flash wasn't always the industry leader. The mid 1990s saw the emergence of RealNetworks' (then known as Progressive Networks) RealAudio and Microsoft's ActiveMovie. These new ways of dealing with media files and streaming media, along with advances in computer networking, more powerful computers and the use of standard protocols, made streaming media practical and more affordable.

RealNetworks' RealAudio became the frontrunner as the most popular streaming format when the Internet began to emerge. Companies such as AudioNet (later known as Broadcast.com) and NetRadio began using RealNetworks' RealAudio to stream their content worldwide. Services by such providers allowed end-users to listen to media files live or on-demand. In October 1996, the Real Time Streaming Protocol (RTSP) standardization initiative launched with Netscape Communications Corporation allowing a client to remotely control a streaming media server. Four months later RealNetworks introduced RealVideo.

RealVideo using the RTSP standard enabled end-users the ability to use VCR-like commands such as "play" and "pause." It also allowed for time-based access to files on a server. RealVideo and its early

domination of streaming technologies enabled RealNetworks to pioneer the industry, grabbing a strong foothold and root of users that were not challenged until Microsoft released its Windows Media Player version 6.4 and later version 7.

Yet as the hardware, both from an end-user perspective and provider prospective, became faster and cheaper, RealNetworks' RealVideo began to lose its foothold. RealVideo had become the format to do everything, but it didn't do anything well. Thus giving rise in popularity to the Windows Media Player and its default file formats in late 1999. Not only was Windows Media already installed with all Windows operating systems, but licensing fees for a RealVideo server became overly costly. The software development was unable to keep up with the rising speed advancements in hardware. RealNetworks also began to push more towards a subscription based service model. Eventually Windows Media was able to take away RealVideo's market share and became the dominant format of choice for end-users.

Windows Media Video (WMV) was specifically designed for streaming applications and as a competitor to RealNetworks' RealVideo and Apple's Quicktime. As computing power continued to increase over the years, Microsoft developers focused their attention on WMV's ability to support variable bit rates, average bit rates, and constant bit rates. This was a response to the growing concern of bandwidth bottlenecks during the last mile of connectivity. In January 2003, Microsoft introduced WMV 9. Native support for interlaced video, non-square pixels, and frame interpolation were some of the important new features introduced in version 9. These new developments solidified Windows Media as a major player and the software had 14 million downloads in the first month alone.

Windows Media for much of the early 2000's dominated because of its ease of use, availability on Windows operating system computers and its support for any container format using specific DirectShow filters. Its ability in later versions to offer digital rights management and support time-limited subscription video services ensures Windows Media will continue to be seen by some as an industry and consumer favorite.

Windows Media's evolution to popularity however is not without its complaints. The first and most prominent complaint is its lack of cross-platform support. In fact, Microsoft ceased development of Windows Media Player for the Mac in 2006. Additionally, Windows Media is plagued by longer buffering times and a worldwide ubiquity rate of only 79.3%. Users also have complained about the digital rights management (DRM) system. Windows Media DRM tends to lose the ability to restore licenses for WMV files following reinstalls. Content providers have their doubts about the DRM system too. Walmart recently announced that they are shutting down their DRM servers. This means people who purchased content from their online music store will lose access to that content.

Windows Media Video has always been really strict on their codecs and refused to license it out, stifling the ability to distribute it from UNIX based servers, until (ironically enough) RealNetworks reverse engineered it and put it into their Helix server. Microsoft likely refused to license it out because they wanted to control the DRM market. Microsoft also wanted to control the systems for licensing everyone's content, not just the encoding and distribution. On the other hand QuickTime and Flash both used existing Sorensen codecs.

The QuickTime format became a major player in streaming after version 4 was released in 1999. QuickTime already had a large following of happy consumers because originally QuickTime was designed and released by Apple in 1991 as a multimedia add-on. The QuickTime video player and format gave Apple computer users a multimedia player and format designed for their specific platform. When version 4 was released, it was accompanied by the release of the free QuickTime Streaming Server. This meant upfront cost for providers was negligible if they chose to support QuickTime. This gave QuickTime an advantage over RealNetworks' RealVideo format when compared to the up-front cost of RealNetworks' streaming servers.

Version 4 and subsequent releases of QuickTime featured such functions as cross-platform support, variable bit rate support for MP3 audio, Sorenson Video, H.264 playback and export, MPEG-2 playback and integration with Apple's iTunes.

However, QuickTime is often criticized as its implementation of H.264 is sometimes considered inferior. Slow performance in both encoding and decoding coupled with H.264 limitations means files generally need to be given greater bitrates in order to have similar quality as other formats. As a result, providers and content producers incur larger files and require more storage space if they support QuickTime. Due to the processor requirements for higher compression files of H.264, an end-user is often faced with having to sacrifice quality or higher bitrates. Additionally, QuickTime versions 4 through 7.3 contained a security compromise for PC users.

What the world needed was a fully web integrated, cross-platform, flexible, customizable, low friction installation web media format. What the streaming media industry received was … Flash.

Adobe Flash (formally, Shockwave Flash and Macromedia Flash) was originally a popular method for adding animation or creating interactivity to web pages. Flash is still used to create animation, interactivity for web pages and web advertisements, but the ability to integrate video into web pages has launched Flash into becoming the

streaming video format of choice. When compared to QuickTime, Real Video or Windows Media, Flash has become widespread and created market dominance. Flash's small install size, On2 VP6 video codec support, filter effects and blending modes, fast initialization time, cross-platform support and better video quality at lower bitrates are a few reasons why Flash has reached 99.0% of Internet-enabled computers as well as a wide range of other devices.

Recently QuickTime and Flash have both adopted standardized codecs and containers, MPEG-4 and H.264. Microsoft developed their VC-1 codec but the format was closed unlike the open nature of H.264. Some worry about Microsoft's history of not releasing information on, or even allowing for, development of interoperable products. Examples include their Office Suite, server products, Silverlight and the .NET Framework. Additionally, VC-1 full compliance requires that either Windows Media Format 11 Runtime or Windows Media Player 11 be installed on the computer. The VC-1 codec is better known as the SMPTE 421M video codec standard and is an alternative to MP4 and H.264. Subsequently, many of QuickTime's customizations to the MP4 container became the basis for the now widely adopted ISO standard.

This brings us back to Flash. Windows Media and QuickTime both did fairly well on their respective platforms because they were automatically distributed with their respective operating systems. Flash didn't have that luxury and yet they managed to sneak past both and gain distribution agreements with browsers and hardware manufacturers because they started out as an innocuous web animation development language. The video came later after they had massive adoption and automatic update features in place.

Such adoption has enabled Flash to even be used in a 'hands-free' environment. This means content could be recorded, processed and distributed without the need for staff to start/stop recordings or timestamp video. This 'hands-free' solution is in place at many American cities. Some cities using this technology include Houston, Irving and Plano, Texas, and Concord, California. Even such media outlets as WBRZ (ABC affiliate) and The Advocate (Baton Rouge, LA newspaper) are deploying this 'hands-free' ability to stream content over the Internet. The environment of providing a true 'hands-free' solution is saving money for such entities by eliminating the need for additional staff or their time, not to mention the increase in productivity because staff isn't needed to timestamp, start/stop a recording or upload content. Typically, this technology and its offerings are cheaper to deploy than those using formats other than Flash.

Microsoft's answer to Flash is Silverlight. It's too soon to understand the impact Silverlight will have on the industry. Flash's larger cross-platform and cross-browser support will challenge Silverlight's acceptance in the industry, especially with respect to Flash's current ubiquity rate. Microsoft has also introduced H.264 support for future versions of Silverlight, keeping pace with something QuickTime and Flash already offer. However, QuickTime and Flash are now both pushing forward with H.264 in the MP4 container, which will leave Silverlight behind even further in development, but it means the industry is going to end up with a unified format sometime soon. ■

Flash content reaches 99.0% of Internet viewers

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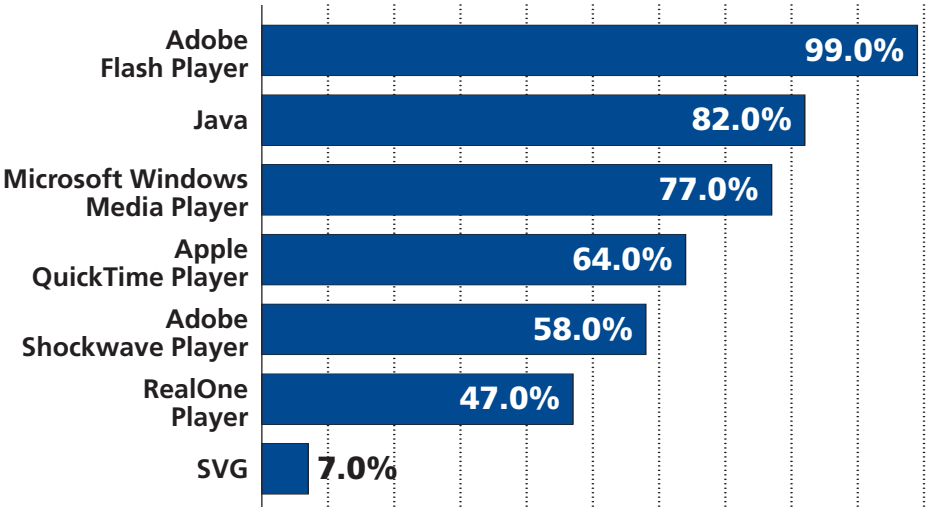

MILLWARD BROWN SURVEY, CONDUCTED JUNE 2008, COMMISSIONED BY ADOBE SYSTEMS INC.

***Bryan R. Halley** is the President of Swagit Productions, LLC. Swagit is a leading streaming media company focused on providing media solutions to television stations, newspapers and local government agencies. Swagit is the only company that does all your video capturing, editing and processing for you, offering a true 'hands-free' solution. For more information on Swagit or Bryan R. Halley, please visit Swagit.com.*

Displaced by Flooding, Des Moines' Government Access Channel Keeps On Broadcasting

By Amelia Hamilton-Morris

Like many government access TV channels, staff is slim and the budget is tight at DMTV-7 in Des Moines, Iowa. But a major disaster in that city changed the value and perception of the role a local cable broadcast channel can play in protecting and informing its public.

When the Midwest's summer floods hit, forcing rivers to overflow their banks and levees to fail, DMTV was thrust into the spotlight as a key component in keeping the community and the local media informed on daily flood-fighting efforts. The channel's daily coverage of the flood caught the eye of local media, elected officials, residents and even Mediacom Communications, the local cable provider that was inspired enough to create a promo about the channel and run it across the entire cable system to tell viewers to tune into Cable Channel 7 for information on the flood-fighting efforts.

The channel gained some press coverage of its own with a mention in the local newspaper and stories in Cable Industry Daily Fax, Library Journal.com, Government Video Magazine, Government Technology Online Magazine and Streaming Media.com.

DMTV City of Des Moines Cable Channel 7 is managed by Amelia Hamilton-Morris who is Chief Communications Officer for the City of Des Moines and in charge of the Public Information Office (PIO). Morris, an awarding-winning veteran television producer while with KPRC-TV in Houston, Texas, works under the direct supervision of City Manager Richard A. Clark. She manages the channel, which provides the community with government news, civic information and cultural entertainment. Housed in City Hall, Channel 7 is also part of the city's emergency information system.

On Tuesday, June 10, when flooding began its crescendo in Des Moines, Channel 7 taped the first two press conferences held by the Emergency Operations Center (EOC) on the flood disaster, putting them on the air within 30 minutes of the events. These and future press conferences were staffed by city and county emergency management personnel as well as Army Corps of Engineers staff and served as the main source of information for the media and the community.

The demand on the channel skyrocketed just 24 hours later when river water began flooding the basement of City Hall. Channel 7, along with all city staff in the building, was forced to relocate.

"When I got the 6:30 a.m. call to come to City Hall right away, I knew it was not good ... My heart was racing as workers began taking apart the television control room to move it to higher ground," Morris said. "Then the city manager turned to me saying we needed to keep DMTV on the air during the disaster and asking what I needed to make it happen." Morris quickly answered, "I need to order a TriCaster(tm) portable live production studio and have it shipped overnight." After a brief discussion of the cost and future uses of the equipment, it was approved. "I am fortunate to have a boss who believes that communicating to the public is very important, especially during a disaster. I got the equipment I needed and staff support from his office," she added.

This "studio in a box," which had long been on Morris' wish list, would be put to the test to keep DMTV broadcasting continuously for almost a month while the disassembled control room sat idle on the second floor of City Hall.

The local vendor loaned the city a TriCaster(tm) until the order arrived. MediaCom volunteered its technicians to wire the channel's first temporary home (Polk County Human Services Building) and connected it to the TriCaster(tm). With the flip of a switch at the head end, in a matter of minutes, DMTV was turned off at City Hall and back on at the temporary studio. Morris, Shekinah Young, a PIO intern from Drake University and freelancer Kris Debolt, were ready to go live with the channel when the time came for the next EOC press conference that same day. The PIO crew would have to perform this type of move at least three more times before the disaster was over, and each time MediaCom assisted them free of charge.

Des Moines Mayor Frank Cownie, Public Works Director Bill Stowe, Army Corps of Engineers representatives, Polk County Supervisors, suburban mayors, Iowa congressional representatives and a host of nonprofits helping in the disaster all showed up at 10 a.m., 3p.m. and 8 p.m. for the live broadcast of the EOC press conferences. The Channel 7 crew grew from three to eight as co-workers jumped in to help. Two members of the City Manager's staff, Marylee Woods and Kandi Reindl, took on the daily responsibility of writing press releases and coordinating internal and external communications and Des Moines' Blank Park Zoo Director Terry Rich and Marketing Director Ryan Bickel, both of whom have media backgrounds, volunteered to assist the PIO staff. Staff was also assisted by John Jacobsen, a new student and intern that was thrown into the mix and came up to speed very quickly in order to help out.

Morris and the crew produced three live daily press conferences for 5 days in addition to broadcasting *City News Updates*, with Morris and Rich acting as anchors for the programs. The Updates aired between the EOC press conferences and contained packaged news stories, interviews on the set, a split screen of live blogging and the website. "The TriCaster gave us better graphics, special effects and transitions than we normally have with our control room. It was a very polished look for the broadcasts. It provided us features for streaming video to the web, editing and encoding and we used it all," Morris said.

The press conferences were well attended by reporters; some TV stations broadcasted live from the EOC press conferences, while others took feeds from DMTV for their newscasts. Even the state's largest newspaper, the Des Moines Register, worked with the channel to post live blogs between DMTV and residents on their website, plus, the newspaper streamed live video of DMTV's broadcasts!

Each show was followed by message boards with more detailed information on everything from evacuation areas and where to get sandbags, to a listing of telephone numbers to call for city and FEMA flood hotlines and websites for more information. For a small investment, the PIO hired two freelancer videographers for an assignment that brought in helicopter video of the damage created by the disaster and images of city employees working around the clock to fight the flood. "DMTV 7 was the only channel where viewers could turn to see the entire EOC press conferences, rather than just sound bites. Residents counted on getting that complete information," Morris said.

"We were booked solid every day with guests—elected officials, city department heads, city council members, Polk County Supervisors, local health officials and nonprofits—were all readily available to go on the air with our little makeshift set," Morris said. "It was a rewarding moment for me because I felt, finally, the great potential and value of the government access channel was obvious to everyone."

Determined to keep the public informed during the flood, the PIO team worked 12- to 15-hour days including the weekend to bring images of the community devastation as well as city department information on road conditions, facilities, shelters and services. Between broadcasts the PIO

team transferred additional equipment from City Hall to the temporary studio to keep the station up and operating.

After five days, the two rivers that meet in downtown-the Des Moines and Raccoon Rivers- crested and the flooding subsided gradually, so the EOC press conferences were discontinued, however the public's information needs continued to be high. The equipment was moved to another temporary location-the City's Central Library downtown, where the City Hall staff had been relocated due to the flooding of civic buildings. Our city council and various board meetings were broadcast live from the library and we began to encode some of our regular programs into the TriCaster to create a playlist of our regular broadcast schedule," Morris said.

In spite of its displacement, Des Moines city government continued to operate- building permits were issued, garbage was collected, telephones were answered, licenses and fees were processed, and city business was performed as usual. Because city staff had to evacuate many of their locations, they also relied on DMTV to stay current with the latest information.

Later on July 9, the channel moved yet a third time back to the City Hall headquarters. It took a week to get the control room rebuilt. The TriCaster was used to broadcast the channel until the equipment was reassembled. In all, the crew and its gear moved to three different locations in a 30-day period.

There is no doubt Des Moines' government access channel rose to the occasion. The disaster coverage was stressful but also inspiring. Since the flood, the channel is creating more local programming and receiving inquiries from the community about placing programs on DMTV. ■

***Amelia Hamilton-Morris** is a communications strategist with 20 years of experience in high profile public relations, broadcasting, and marketing positions. Over the years, she has built a reputation as an aggressive professional, noted for the ability to get results, and communicate effectively with a broad range of audiences. She spent several years as a television reporter and producer for KPRC-TV in Houston, Texas where she won numerous awards for her work. Amelia has also worked for NBC Network in Washington, D.C. and WOI-TV-5 in Des Moines as well as in corporate communications for Fortune 500 companies. She managed the statewide public relations campaign of the Iowa Sesquicentennial Commission, the yearlong celebration of Iowa's 150th Anniversary of Statehood.*

In her present position as Chief Communications Officer for the City of Des Moines, she manages the Public Information Office under the direct supervision of the City Manager. She directs the activities for the City's Cable Channel, DMTV-7 and the City's web site. She is also responsible for media relations, employee communications, event planning, and speech writing.

NEW MEMBERS

Welcome to NATOA

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PROGRAMMER'S SPOTLIGHT

NATOA's Programming pros share their own unique styles and challenges

Bridget Broullire

TV Writer/Producer, Rockville Channel 11, City of Rockville, MD

Station profile: Rockville Channel 11 produces programming for the City of Rockville, the third largest city in Maryland, with a population of 65,000. We carry live meeting coverage and produce news and many other special programs.

What is your current position? TV Writer/Producer

What is the mission of your channel? Our primary mission is to bring the residents of Rockville the most news and information on their City Government. This is done through our live and replayed airings of Mayor & Council and Boards & Commissions meetings and our non-meeting programs.

What do you like/dislike about your job? We have a great team at Rockville Channel 11 and I like that we are able to produce interesting programming in the midst of tight resources. I come from a news background and I am always hungry to tell the next great story about what is happening in the City, and I like the fact that Rockville Channel 11 allows me the opportunity to do this.

If budget was not an issue, what would you like to do with your channel? On my wish list is a

state-of-the-art studio. Since we do not have access to a studio, our team has to create a studio environment for every production, and they do a great job with this, but it is a stress on the staff and on our equipment.

Why should viewers tune in to your channel? (If they only knew that....) We are one-stop-shopping for everything that is happening at the City of Rockville and we produce our programs in an informative and interesting way.

What is the most challenging part of your job? The most challenging part of my job is meeting internal requests effectively while producing quality programming for our 24-hour channel.

How has technology affected your position? We now offer even more customer service to our residents through our Video On Demand technology, which has made our programming more accessible. Technology pushes us to ask, "what's next," and this helps keep us improving as a channel so that we can stay current for our viewers.

Tell us about a recent accomplishment. We just recently won national government programming awards for the 14th consecutive year.

What makes NATOA a valuable organization? I just attended my first NATOA Annual Conference and I walked away inspired and energized. It was helpful to attend sessions and compare notes with other PEG channels. I find value in the fact that NATOA is a forward-thinking organization that supports and protects its members.

What one thought would you like to leave with your colleagues? Don't be afraid to promote your accomplishments and let your internal and external customers know about the hard work of your channel. This can be done with a short promo or an internal newsletter. Also, I always try to ask myself, would I be interested in watching our channel if I was flipping by with a remote?

What is your favorite program on your channel and why? My background is also on-air marketing and promotions and we currently have a few promotional spots airing from our logo re-launch that are "feel-good" pieces and are meant to inspire the viewer about the city and Rockville Channel 11.

Vince Crunk

Production Manager, TV23, City of Springfield, MO

Station Profile: Our population is about 155,000 (with around 55,000 subscribers on Mediacom), metro area around 450,000, our budget is slightly under $400,000. TV23 is a 24/7 operation and we live-stream all programs AND we archive all programs that we produce. We also close caption our bi-monthly city council meeting. We air all major board meetings either live or within one day of their occurrence.

What is your current position? Production Manager

What is the mission of your channel? To use television, cable, and the internet to provide as much information about the operation of our City government as possible.

What do you like/dislike about your job? Statewide franchising reduced our budget by 20% and we lost all future capital grants from the cable provider. We also spend so much of our time just getting things done (the tyranny of the urgent!) that we can't spend quality time on projects. Too much emphasis on quantity v. quality.

If budget was not an issue, what would you like to do with your channel? Add more people, move our operation OFF-SITE to a studio facility as we had planned BEFORE statewide franchising took effect.

Why should viewers tune in to your channel? (If they only knew that....) We can show them how the sausage is made!

What is the most challenging part of your job? Keeping my head above water and trying to manage a diverse staff with flexible schedules.

How has technology affected your position? It gives us more opportunity to reach our audiences but also has put us on a treadmill of upgrades. As I get older, keeping up with the technology gets tougher and tougher.

Tell us about a recent accomplishment. As I write this I am wrapping up editing on a video for our Parks Deptartment to use with the USOC in Colorado Springs that will hopefully result in more Olympic training opportunities coming to our City (we already have four CODP programs).

What makes NATOA a valuable organization? Information when I need it. Also networking with peers around the country.

What one thought would you like to leave with your colleagues? I shared this with a lunch table-mate in Atlanta (at the 2008 Annual Conference) – we try so hard to improve our weaknesses but a big-time management motivational speaker once said we should focus on making what we do well – better. I am weak when it comes to being an NFL placekicker. I could practice and practice but I might never get good enough to actually be an NFL placekicker. On the other hand if I am already a decent writer and I work at being an even better one, I've got a better shot at making a difference rather than wasting my time trying to be good at something I might not ever be good at. So focus on our/your/my strengths!

What is your favorite program on your channel and why? It used to be our Mayor's program because I would work to find special or interesting guests and was actually successful at that when my boss would not produce the show (she normally booked all the guests) but our Mayor decided to stop doing the show earlier this year. PSAs are fun because we can finish them up quickly and sometimes they DO make a difference. We did one to encourage testing for AIDS that really helped people understand what they needed to do and we tried to break down the stigma and stereotypes related to HIV/AIDS. ■

We promote community interests in communications

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- Oversee emergency and communications and information services;
- Create video programming for access channels or web streams;
- Manage poles, conduits or rights-of-way;
- Negotiate or administer telecommunication and video franchises;
- Advise policy makers on communications issues;
- Monitor telecommunications deployment and policies; or
- Need education, training and/or technical assistance.

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Membership Categories

NATOA has several different types of membership categories depending on the nature of employment and benefits sought.

Individual:

- Possible candidates in this category include those who are primarily employed or retained by a state or local government, including elected or appointed officials, who do not represent the industry.
- Entitled to voting privileges.
- Allowed access to the member's list serv.
- Only the Individual listed on the membership will receive member benefits and privileges. Membership does not apply to the corporation or agency that the individual is employed by.

Agency:

- Possible candidates in this category include government employees from a municipal, county, regional or state authority.
- Entitled to voting privileges.
- Allowed access to the member's list serv.
- Agency members are allowed three individuals, including the primary member, who receive membership benefits. Only the primary member, however, has voting privileges.
- Agency members who wish to list more than three individuals to receive member benefits may add additional members to the membership at a per person cost.

Associate (for profit and not for profit)

- Possible candidates in this category include those who are industry retained, students, government or access center employees.
- Not entitled to voting privileges.
- Not eligible for the member list serv.
- Those who are employed by not for profit organizations, including access centers, may join as an Associate – Non-Profit member only.
- Those who are employed by for profit organizations, including law firms or corporations serving industry may join as an Associate – For Profit member only.
- Only the Individual listed on the membership will receive member benefits and privileges. Membership does not apply to the corporation, organization or agency that the individual is employed by.

Student:

- Open to any individual registered full time and attending an institution of higher learning.
- Not entitled to voting privileges.
- Not eligible for the member list serv.

All members receive the Membership Directory, *NATOA Journal*, Newsletter, Programmer's ListServ, Discounted Registration Rates, Discounted Publication Rates, and access to the appropriate Members Only Areas of the Web site.

The above descriptions are for convenience only. The specific qualifications of membership and privileges are defined in the NATOA Bylaws, which may be reviewed on the NATOA Web site at *www.natoa.org*.

Please select the appropriate membership category on the membership application. NATOA Headquarters will review and contact you if there are any questions relating to your application.

Please provide the following information:

Name: _____

Title: _____

Agency/Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Web Address: _____

If you are a government representative, please provide the following information:

Population: _____ Subscriber Base: _____

Cable Operator(s): _____

Franchise Expiration (Mo/Yr): _____

Telecommunications Providers: _____

Please list the number of PEG Channels your community has: P ___ E___ G___ Does your community have an INET? _____

Government Members: Are you involved in (check all that apply):

☐ Cable Franchise Enforcement
☐ Government Access Channel
☐ Telecom Planning
☐ Telephone System Management
☐ Cable Rate Regulation
☐ Public/Educational Access Channel
☐ Emergency Communications
☐ I-Net Planning Management
☐ Engineer
☐ Computer LAN/WAN
☐ Attorney
☐ Municipal Communications System

Agency Members—Please provide one form for Primary Member and list up to two additional members indicating name, title, address, phone, fax and e-mail.

1st Additional: _____

_____

2nd Additional: _____

_____

$100 Per Person Cost for Additional Benefits. List names for which additional benefits are being sought:

_____

Individual, Associate and Student Members—Please check the most appropriate classification of your job:

☐ Access/Media Center
☐ Access/Media Center Supplier
☐ Accountant
☐ Attorney
  ☐ For Government
  ☐ For Industry
☐ Cable Industry
☐ Consultant
  ☐ For Government
  ☐ For Industry
☐ Student (Indicate School) _____
☐ Engineer
  ☐ For Government
  ☐ For Industry
☐ Telecom Industry

All memberships will expire December 31, 2009. Membership fees after June 30, 2009 are prorated based on a half year schedule.

	DUES	ASSESSMENT
☐ Agency–Population 0 - 25,000	$445	$250
☐ Agency–Population 25,001 - 50,000	$555	$375
☐ Agency–Population 50,001 - 250,000	$830	$625
☐ Agency–Population 250,001 - 1,000,000	$940	$950
☐ Agency–Population 1,000,000 +	$1,050	$1,250

	DUES	ASSESSMENT
☐ Individual	$415	$125
☐ Associate Non Profit	$390	$125
☐ Associate For Profit	$975	$375
☐ Student	$30	

Payment Information

Membership Type: _____ Dues Amount: $_____ Annual Assessment Amount: $_____ Amount Enclosed $_____

Payment Method

☐ Check
☐ Credit Card (Visa, MC, AmEx)

Mail checks to NATOA, PO Box 826127, Philadelphia, PA 19182-6127
Apply online at www.natoa.org or mail to 2121 Eisenhower Road, Suite 401, Alexandria, VA 22314; Fax: (703) 519-8036

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Name on Card _____ Signature of Cardholder _____

Government P.O. _____ (Invoice will be mailed.)

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July 16, 2009

The Honorable Larry Strickling
Assistant Secretary of Commerce
Administrator
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Assistant Secretary Strickling,

We greatly appreciate NTIA's exhaustive process of soliciting public input as the agency crafted guidelines for the use of broadband Recovery Act funds. We recognize the challenges agency staff faced in considering the volumes of comments filed, and issuing a Notice of Funding Availability (NOFA) under the intense pressures of Recovery-Act imposed deadlines.

Our organizations, which represent rural and urban constituencies, as well as municipal governments and public interest groups, have significant concerns about several items in the NOFA. We hope the agency will consider the changes we recommend, as outlined below. In addition to considering this letter, we would like to request an opportunity to meet with you and other appropriate NTIA staff to outline our suggestions in more detail.

In light of the complex nature of the NOFA and varying interpretations of its meaning that have surfaced in public workshops, we also urge NTIA to publish a clarification on how it will interpret the NOFA to resolve these issues. We also are ready to assist the agency in reaching out to the community of public interest broadband advocates to further clarify the agency's intent and the program guidelines.

The definition of "underserved" will exclude many worthwhile projects
The definition of "underserved" has the effect of precluding any residential infrastructure program in an area where a minimal level of broadband, even first-generation DSL, is generally available. This preclusion occurs regardless of whether advertised speeds are actually delivered; whether service is affordable; whether systems are capable of serving all interested consumers (in many communities where DSL is advertised, residents and small businesses are refused service because circuits are tapped out); and whether the speed of service meets the needs of the consumer (for example, DSL and even cable modem service are woefully insufficient for home-based business and teleworking).

> *Recommendation: To be consistent with the recently published application, amend the definition of "underserved" to clarify that only one, rather than two, of the definitional options be met, thus enabling urban and metropolitan areas, and*

even small towns in rural areas to apply even if there are other forms of low-speed broadband, such as early-generation DSL, in the community.

Recommendation: Add a definition of "affordability" as a measure of whether an area is underserved. Allow applicants to supply data from the most recent Census or other source of legitimate, verifiable data to demonstrate that existing service is not affordable relative to average household income.

The NOFA de-prioritizes statutorily important projects

Although the ARRA assigns five co-equal purposes to the BTOP program, the NOFA prioritizes the first two purposes (serving "unserved" and "underserved" areas), creating prerequisites for projects that address the other three purposes (community anchor institutions/vulnerable populations; public safety; and job creation/economic development). One result is that community anchor institutions and middle mile projects in areas that do not meet the definition of "underserved" are ineligible for infrastructure grants. Communities cannot apply for funds to build capacity to schools, libraries, first responders, and health care facilities—all of which require 100 *Megabit* or *Gigabit*+ connection speeds—because they are located in neighborhoods where residents can purchase consumer services of several hundred *kilobits* per second.

Recommendation: Waive or eliminate the requirement that projects to community anchor institutions have to be in "unserved" or "underserved" areas. Allow applications that serve any community anchor institution because the Recovery Act DOES NOT prioritize purpose areas 1 (unserved) and 2 (underserved) over 3 (anchor institutions and vulnerable populations), 4 (public safety), and 5 (job creation and economic development). In a related fashion, waive or eliminate the requirement that "last mile" networks to community anchor institutions also have to serve the entire Census block.

Recommendation: Allow funding for middle-mile projects that are in unserved or underserved areas or that promote the other statutory purposes of BTOP, namely, provide improved broadband availability for community anchor institutions and vulnerable populations, public safety entities, and/or stimulate job creation and economic development.

The NOFA gives incumbents opportunities to eliminate potential competitors

By using the language of "advertised" speeds to determine whether an area is "underserved," the NOFA enables carriers to preclude participation through advertised (and frequently exaggerated) maximum speeds rather than guaranteed minimum speeds. This problem is compounded by the de facto veto the NOFA affords carriers to show that an area is not "underserved" by quoting aggregate speeds—not what they actually deliver. This outcome is patently unfair—carriers, who have an incentive to obfuscate service shortcomings, may advertise speeds of up to 3 Mbps while refusing to guarantee those speeds. For example, cable modem systems are engineered as shared networks so speeds can drop dramatically as

providers use larger and larger contention ratios. Or a carrier may advertise service in a mid-size city's newspaper, but may offer no service at all throughout much of the paper's circulation area. An application for funding for an alternative network that will deliver guaranteed speeds would be precluded by overstatements contained in carriers' advertising.

The NOFA also allows carriers to dispute data submitted by an applicant, yet gives the applicant no ability to refute the carrier's claims. As is, applicants must go to extraordinary lengths to gather the data necessary to prove that it meets the NOFA's definition of unserved or underserved, particularly in the absence of publicly available data on broadband speed, availability and subscribership. To require applicants to engage in rigorous data collection without allowing them to defend that data against a potential competitor's attacks is without merit. Furthermore, we argue that allowing incumbents to contest applications at all gives an unfair advantage to carriers with significant legal expertise and staff resources to block potential competitors. Carriers may even resort to blocking applicants they may not immediately compete with simply to prevent competitors from gaining market share anywhere, ultimately undermining the BTOP program.

Recommendation: Clarify that "advertised speeds" means "guaranteed speeds" to individual premises, simultaneously and during peak network congestion times, for purposes of both the definition of "underserved" and the latter stages of the review process in which carriers may demonstrate their speeds in the proposed service areas.

Recommendation: Eliminate the provisions in the NOFA that allow incumbent carriers to challenge BTOP applications for any reason, in any location. At an absolute minimum, amend the NOFA to allow applicants to review and contest any claims made by incumbents about its application and accompanying data, including availability of service in the proposed area.

Anchor Institutions and Municipal Projects Face Insurmountable Barriers

Multiple elements of the NOFA have the effect of making municipal and community participation extremely difficult if not impossible. This runs contrary to the explicit language of the Recovery Act, which includes among "eligible entities" both local governments and non-profits. For example:

A.) By defining service to community anchor institutions as "last-mile" and requiring that last mile-networks serve entire census blocks, the NOFA tilts toward carrier models for residential service rather than community models that may focus on community anchor institutions such as schools and libraries. For nearly two decades localities have successfully operated Institutional networks, and these community anchor institutions have delivered Internet services to countless Americans. The NOFA makes residential service a requirement of funding for community anchor institutions (though the statutory language does not), eliminating countless potential public projects that would (1) serve community anchor institutions and (2) provide capacity to the private sector to bridge the last

mile—even if public projects do not themselves serve all residents in a given area.

B.) The NOFA requires a showing of "unserved" or "underserved" by census block—data that only the carriers can access without extraordinary efforts and cost. Many American cities, such as San Francisco, Miami, and Philadelphia, have engaged in extensive surveys of their community over the past few years, using multiple methodologies, including privately-conducted written and phone surveys of statistically-significant samplings of the communities and City-conducted community-wide surveys. But in order to gather data by census block, applicants would have to survey the community at a far more granular level with a concomitant cost that is simply not feasible. As a result, communities face an enormous hurdle in demonstrating that neighborhoods are "underserved." Despite the fact that these communities have already done extensive surveying of the on-the-ground realities—this simply is not enough to meet the NOFA's requirements. In rural areas, where a census block may cover a substantial geographic area, the challenges in collecting data are even greater. In contrast, incumbent carriers have much of this data already and they know where service is offered and what rates of penetration have been achieved. The end result is that the telecommunications incumbents have far lower burdens to meet under the NOFA than do public entities or community anchor institutions.

Recommendation: Waive or amend the requirement for census block data such that communities can demonstrate that they meet the definition for "underserved" in other ways, such as statistically-significant data, that are more feasible, less burdensome, and just as rigorous. Alternatively, the FCC should require that all providers make these data publicly available.

BTOP and RUS Coordination is Unclear

Coordination between the NTIA's BTOP program and the USDA's Rural Utilities Service (RUS) is necessary, however the requirement that projects which serve rural areas must apply first to RUS before being considered for a BTOP grant could cause confusion. RUS offers loan and loan guarantees, not grants. So if a rural applicant is seeking a grant, not a loan, it is unclear whether their application would be summarily rejected by RUS for failing to meet the basic grant guidelines.

Recommendation: Clarify that any proposals that are submitted to RUS seeking grant funds would be routed to BTOP. Alternatively, allow applications for rural projects to be submitted to BTOP directly.

Projects that are Holistic in Approach are Discouraged

The most successful broadband projects combine access to high quality, affordable infrastructure with adoption programs. Yet the NOFA requires separate applications for infrastructure projects and projects for sustainable broadband adoption. If only one of those applications is successfully funded, it may be less or ineffective without the other. For example, a proposal to create a public computing

center may only be possible if the proposal to bring infrastructure to the center is also funded. Infrastructure is only valuable if people use it effectively; this artificial barrier hamstrings NTIA in identifying and funding innovative projects that could serve as models for other communities.

> *Recommendation: Clarify that one proposal may contain elements of infrastructure, sustainable broadband adoption, public computing center capacity, or other priorities as identified in ARRA, regardless of what "pots" of money NTIA pulls from in funding the project.*

Projects on Native Lands may be Disadvantaged

The NOFA gives state governments the opportunity to rank projects submitted from entities within its borders, which we believe may disadvantage proposals to bring broadband to Native American lands. State governments have a history of failing to consider the impact of state policy on Native lands located within their borders, often do not consult with Tribal government leaders, and lack the necessary data to appropriately judge the merit of proposals on Native lands. Indeed, Native lands are sovereign nations, and not under the jurisdiction of any state government. Since Native lands are among those least served by telecommunications companies, it is important to remove any potential barriers to broadband projects that could bring service to these historically disenfranchised communities.

- *Recommendation: Consider proposals on Native lands on their own merit, and without influence of any state rankings or recommendations.*

The organizations listed below are deeply invested in the success of BTOP and RUS in bringing affordable, high quality broadband to the U.S. We offer our assistance to NTIA in ensuring funded projects can be held up as examples of what can be done with continued U.S. investment in broadband. Please contact Beth McConnell, Media & Democracy Coalition, at bmcconnell@media-democracy.net or 267-918-7207 if we can be of any assistance.

Sincerely,

Charles Benton, Benton Foundation
Dee Davis, Center for Rural Strategies
Amalia Deloney, Main Street Project
Harold Feld, Public Knowledge
Mary Beth Henry, National Association of Telecommunications Officers and Advisors (NATOA)
Joel Kelsey, Consumers Union
Gerry Lederer, TeleCommunity
Beth McConnell, Media & Democracy Coalition
Sean McLaughlin, Access Humboldt
Sascha Meinrath, Open Technology Initiative
Tracy Rosenberg, Media Alliance