

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

In the Matter of)	
)	
Video Device Competition)	MB Docket No. 10-91
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-80
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, THE NEW AMERICA FOUNDATION'S OPEN
TECHNOLOGY INITIATIVE, ANNE ARUNDEL COUNTY, MARYLAND, ILLINOIS
NATOA, THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, THE NATIONAL CAPITAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE WASHINGTON
ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE
MINNESOTA ASSOCIATION OF COMMUNITY TELECOMMUNICATIONS
ADMINISTRATORS, AND SCAN NATOA**

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I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors (“NATOA”) the New America Foundation’s Open Technology Initiative, Ann Arundel County, Maryland, Illinois NATOA, the SouthEast Association of Telecommunications Officers and Advisors (“SEATOA”), the National Capital Association of Telecommunications Officers and Advisors (“CAPATOA”), the Washington Association of Telecommunications Officers and Advisors (“WATOA”), the Minnesota Association of Community Telecommunications Administrators (“MACTA”), and the States of California and Nevada Chapter of NATOA (“SCAN NATOA”)

(collectively “Commenters”) respectfully submit these comments to the Federal Communications Commission (“Commission”) in response to the Commission’s Public Notice, FCC 10-60 released Apr. 21, 2010 (the “Notice”). In these comments, Commenters emphasize the need for treatment of public, educational and governmental (“PEG”) programming that is equivalent to the treatment of other channels on the multichannel video programming distributor (“MVPD”) system. As the Commission has noted, there have been and continue to be rapid changes in video technology, encryption/security, digital conversion, IP conversion, and Web integration.¹ In parallel with these technological changes, the role and responsibility of PEG programming has increased. In particular, the increasing need for local governmental authorities to notify the public and manage emergencies has added to the responsibilities of governmental access programming, which is increasingly integrated with community emergency operations centers (“EOC’s”) and first responders.² Added to this is the diminishment of the scale and quality of local network affiliate efforts, which were once the mainstay of local emergency notification and information.

II. BACKGROUND

Recent technological changes have reduced the visibility and effectiveness of PEG programming. Digital migration by cable operators has necessitated having set-top boxes to view the channels, for example, which has made the channels unavailable or difficult to find for viewers without a box on every set.³

¹ Federal Communications Commission (FCC). 2010. Notice of Inquiry in the Matter of Video Device Competition. MB Docket No. 10-91. April 21, 2010.

² See *infra* Part III.

³ Federal Communications Commission (FCC). 2010. Notice of Inquiry in the Matter of Video Device Competition. MB Docket No. 10-91. April 21, 2010.

The increasing reliance on interactive navigation menus makes it critical that all programmers have their programming names and descriptions in the menu, and that the channels be locatable by the audience.

The interactive channel navigation guide is critical. As an illustration, nowhere in the Notice is there any mention of channel number or channel surfing, just “navigation” handled by smart devices. Navigation provides powerful advantages on a system with hundreds of channels. Viewers rarely find PEG or other channels by surfing; rather, they use the menu, often navigating by program subject matter. Web content on systems such as Roku re-create the environment of “channels,” but these are not sequential and essentially transform a “www.xyx.com” identity to a channel brand name (Netflix, Amazon Video on Demand). If a channel is not in the interactive guide, it essentially does not exist. It certainly will not be found by the public in an emergency.

The current state of PEG on navigation menus is mixed and generally poor. In the best situation there is some equivalence with non-PEG programming. For example, the PEG programmers may have independent access to the channel guide and provide programs and times to the MVPD or a third party. Our experience suggests this represents a small minority of PEG channels, even in major markets.

In other environments PEG program titles are not listed. Channels may or may not be named, but program titles simply indicate “to be announced” or “access programming.” This is sometimes the fault of the MVPD for not including the information, and sometimes the fault of PEG programmers for not providing the information.

In the worst case, even PEG channel titles are obscured or removed. In this scenario, the channel identifier is blank or states “Local Programming” or “access programming.” The

channel listing does not even indicate whether it is public, governmental, or educational, or the name of the municipality or entity responsible for the channel.

Some MVPDs, often new entrants, object that they are not technically capable of providing the PEG programming information on the menu. For example, Verizon claims that its program guide is regional or national and therefore not accessible to PEG programmers. On the navigation menu on Verizon systems, the PEG channel names are all listed as “LOCAL,” programming titles are listed as “Local Programming” for all time slots, and the program descriptions are listed as “Local Programming – To be announced.”

On the AT&T U-verse system, the PEG channels are not presented as regular channels. Instead, AT&T opted to segregate PEG into “Channel 99,”⁴ a part of the system that, once selected, accesses a separate and unwieldy Web-based interface and menu of channel titles (not programming titles) and presents selected programming as a Web stream.⁵ Although AT&T has an interactive navigation guide, neither the PEG channels nor the programming titles are on it.

An example of an acceptable environment is one in which the MVPD makes available to the PEG programmer access to the provider of the third-party channel guide used on the cable system. In Anne Arundel County, Maryland, the PEG programmer can access the Web site of the programming guide, enter a password-protected environment, and enter and/or edit programming information.

Another acceptable instance is where the programmer provides its programs and times directly to the MVPD, who then enters it into the interactive guide. The Raleigh, North Carolina, colleges upload their channel schedules to Time Warner Cable in Microsoft Excel format.

⁴ AT&T, “AT&T U-verse and Community TV on ch-99,” http://www.att.com/Common/iptv/files/dkpages/dk_peg.html (last visited July 9, 2010).

⁵ Nate Anderson, “FCC asked to probe AT&T treatment of public access channels,” *Ars Technica*, February 2, 2009, <http://arstechnica.com/tech-policy/news/2009/02/atts-u-verse-faces-fcc-complaint-over-peg-channels.ars> (accessed July 9, 2010).

In environments where the guide and channel lineup are regional, it may also be acceptable for the MVPD to display in the root channel guide the PEG content for all PEG channels in the system service area, if technical issues make it difficult for the MVPD to provide a different channel guide for the different PEG franchise areas in the MVPD system. Alternatively, it would be possible for the cable operators to create a Web-based “widget” accessible through the interactive user interface, which could be used to provide a locally targeted guide for PEG channels that launches the appropriate channel when selected. Localized information and services based on user–entered ZIP codes or account information is already provided via similar widgets on the Verizon FiOS systems for traffic, weather, social networking, “411” directory services, and other information.⁶

III. PEG CHANNELS ARE VITAL TO INFORMING THE PUBLIC ABOUT EMERGENCY SITUATIONS AND ARE OFTEN INTEGRATED WITH COMMUNITY EMERGENCY OPERATION CENTERS.

PEG channels serve a critical role in emergency management. For example, Anne Arundel County, Maryland has the EOC and government access center co-located, with the ability to immediately override the government access channel with emergency information.

Contra Costa Television (CCTV), a Government Access channel serving Contra Costa County, CA, and over 300,000 cable subscribers, is part of the County's Community Warning System (CWS). The CWS is intended to alert the community in the event of a toxic release that may cause injury to the public. The large number of refineries and chemical plants that operate in the county and past accidents have made this system a necessity. CCTV has been involved in the public education efforts through the coverage of community preparedness events and the permanent inclusion of "Shelter in Place" instructions on the channel's bulletin board. "Shelter in

⁶ Verizon, “FiOS TV Features,” <http://www22.verizon.com/Residential/FiOSTV/Overview.htm> (accessed July 9, 2010).

Place" instructions are not only shown on a regular basis, but upon activation of the system, CCTV will run these messages in multiple languages.

CCTV is also instrumental in the outreach efforts to promote cellular and text-based warning message subscriptions. Upgrades are planned to automate the integration of on-going event notification during a system activation into the bulletin board system. CCTV will be adding visually instructive announcements in order to reach those with limited English proficiency. The channel also plays host to an Emergency Alert System (EAS) receiver and character generator which displays other warning messages during an EAS activation (Amber alerts, weather, etc.). CCTV also promotes the regular publication of each processing facility's Accidental Release Plans which are a requirement of the County's Industrial Safety Ordinance. CCTV has installed fiber between the Emergency Operations Center and CCTV in order to facilitate live video feeds from the EOC. CCTV is about to install a back up bulletin board server and display at the EOC along with fiber transmission hardware to act as a back up feed to the cable operator in the event our facilities become unusable.

The City of Richmond, CA has used PEG channels in conjunction with the state Office of Emergency Services (OES) since 1989. One of the earliest versions was the cable override, which would send an audible announcement over the regular channel and a crawl over the premium channels. More recently they have used software that can send a crawl out over the channel. During the 9/11 attacks, channel management knew that most people would be watching the news channels, but mixed in local announcements from their City Manager telling residents to come to any city building if they felt unsafe. They also carried information from OES on phone numbers to call if residents had family on any flights that day, and provided information on how to help children not be overwhelmed by the video being shown that day.

The PEG channel is the first call-out during a disaster and can phone the information into the TV and radio stations (as long as they are up), then staff responds to the EOC during an activation and continues to glean the information from there for public distribution. Depending on the size of the emergency, they carry the information on TV, the local TIS radio station they operate and their website. Finally, they have access to the EDIS (Emergency Digital Information Service), putting out notices on weather, Amber alerts, and other regional disasters. Because weather is so critical to traffic in California, they put up the weather alerts, even if the EOC is not activated. Additional examples are included at the end of this document in the Appendix.

IV. PEG AND NON-PEG CHANNELS SHOULD RECEIVE EQUIVALENT TREATMENT WITH REGARD TO PLACEMENT AND ACCESSIBILITY.

Commenters request that the Commission require equivalent treatment of PEG and non-PEG programming with regard to placement and information on navigation menus, ability to find and select channels, and ability to view the programming lineup. Commenters also request that a standard architecture exist for capture and storage of programming guide information, and that this architecture accommodate the granularity of existing and future MVPD systems. The architecture could use dedicated codes for each system or lineup, similar to those used to program TiVo boxes;⁷ alternatively an architecture could uniquely identify the user and the lineup from FIPS codes, ZIP codes, physical addresses, and MVPD names.

Nothing about the evolution of the set-top box environment should intentionally or inadvertently further undermine a user's ability to find or view PEG programming.

⁷ TiVo, "My CableCARD channels and Guide data do not match," http://support.tivo.com/app/answers/detail/a_id/143/kw/channels/r_id/100041 (accessed July 9, 2010).

Regarding the AllVid scenario proposed in the NOI,⁸ navigation takes place in the standards-based navigation equipment available from the third-party manufacturer. In the AllVid framework, the presentation of the information and the selection by the user is outside the physical demarcation of the cable operator, on the user premises.

The provision of the programming guide is raised as a matter of inquiry by the Commission, and is not firmly defined. The presentation of the guide is identified as a potential differentiator between competing set-top boxes, and likewise is a matter of inquiry and not firmly defined.

In an environment where PEG and non-PEG are treated equivalently, PEG programmers would have the ability to enter information into any existing databases where non-PEG programmers can enter programming. Creators and providers of programming guide databases would not be able to discriminate against programming, for example, because it is PEG or because it is not commercially affiliated with the programming guide creator.

To the extent that there may be costs to participate in a program guide, the costs should bear some relation to the potential audience of the channel, in order to make participation affordable to an access programmer. It is significant that PEG programmers own their program titles and information and can freely provide the programming information without distributing royalties.

Given the importance of a channel's presence on the interactive programming guide, creating and providing an interactive programming guide database is potentially comparable to Internet domain name registry, with significant responsibility by the guide operator for completeness, consistency, and inclusion of channels. Therefore some level of regulation and

⁸ Federal Communications Commission (FCC). 2010. Notice of Inquiry in the Matter of Video Device Competition. MB Docket No. 10-91. April 21, 2010.

standardized architecture should exist so that PEG programmers will be able to get their information to the appropriate databases, and developers of navigation equipment will be able to link any equipment they develop to the channel lineup, channel identity, and programming titles for a particular user.

Finally, users should be able to rely on the fact that the navigation equipment they purchase will be able to reach the entire channel lineup they purchase from the MVPD. A navigation device that filters programming—for example, only providing content owned by a particular corporation—would be the video equivalent of a promotional AM/FM radio that only provides access to a single radio station.

V. PROPOSED DRAFT RULE

MVPDs will continue to provide navigation and programming guides until the complete adoption of an AllVid environment. Commenters propose Draft Rule 76.1210 to create equivalence in the treatment of PEG and non-PEG programming, based on language in the franchise agreements between Anne Arundel County, Maryland and the MVPDs serving its residents.

In an AllVid environment, the responsibility for equivalence moves beyond the MVPDs, and may require regulation of the programming guide providers and consumer electronics manufacturers, as well as standard architectures for programming guides. As AllVid develops further, Commenters request that the architecture treat PEG and non-PEG equivalently.

As such, Commenters propose this revised Draft Rule:

Section 76.1210. Channel programming information provided by navigation devices.

Where a multichannel video programming distributor presents an on-screen program guide, whether interactive or non-interactive, in a given market, through

a navigation device, the distributor must include the station identity and a detailed program schedule for each public, educational, and governmental access channel in the market in its on-screen guide and in any online program guide it makes available to its subscribers, provided that the local franchising authorities, or other access managers, in the market that provide the access channel make available the channel's detailed program schedules to the distributor, within the distributor's normal, required lead times and using the distributor's regular, on-screen program guide design format.

VI. CONCLUSION

In conclusion, Commenters request that the Commission revise its rules to ensure that PEG channels and non-PEG channels receive equal treatment on MVPD systems. In these comments, Commenters propose a draft regulation that would ensure such equal treatment. We look forward to working with the Commission and other interested parties on this issue.

Respectfully submitted,

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Appendix

Examples of PEG Channel Importance to Emergency Management

- Ann Arundel, MD: EOC and government access center co-located, with the ability to immediately override the government access channel with emergency information.
- Brunswick, ME: The channel's operations system allows override of programming and places announcements on the access channel. The EOC and Public Safety Dispatch center are trained in the use of the system.
- Contra Costa, CA: Government access channel is part of the County's Community Warning System (CWS). The CWS is intended to alert the community in the event of a toxic release that may cause injury to the public. The channel is also instrumental in the outreach efforts to promote cellular and text-based warning message subscriptions.
- Richmond, CA: Uses software that can send a crawl out over the channel. The PEG channel is the first call-out during a disaster and can phone the information into the TV and radio stations (as long as they are up), then staff responds to the EOC during an activation and continues to glean the information from there for public distribution. Depending on the size of the emergency, they carry the information on TV, the local TIS radio station they operate and their website.
- Rialto, CA: Government access channel staff is in the EOC during emergencies. The station assists with public safety training and posts police or fire department information on channel, Web site and Facebook.
- Surprise, AZ: Channel has an emergency e-mail/SMS notification system for Amber alerts, missing persons, and public safety alerts. When an alert is sent out, it is automatically shown on the PEG channel as a crawl. The EOC has direct connection with the communications department and has full resources of TV, web, and the media if deemed necessary.

- Austin, TX: The EOC can override the government access channel with critical content in an emergency.
- Mentor, OH: Emergency dispatchers can publish messages to the government access channel even when channel staff is not present.
- New Jersey: The Jersey Access Group provides an instructional video on enhancing the effectiveness of an access station for emergency notification (<http://jagonline.org/gallery/>).
- El Segundo, CA: PEG stations are an integral part of the communication systems for residents. During any emergency when the EOC is activated PEG is a part of community notification reporting to assigned EOC PIO officers. They distribute to local cable and radio. This allows a coordinated message to go out to all resources. They display a lot of local information and have participated in all disaster drills. They also have a Community Alert they coordinate with the police department to put on the channel's bulletin system and between programs that notify residents of any potential safety issues, crime bulletins, etc.