

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

In the Matter of Petition for Declaratory
Ruling Regarding Public, Educational, and
Governmental Programming

MB Docket No. 09-13

CSR-8126

CSR-8127

**REPLY OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT AND
THE PHARR - SAN JUAN - ALAMO INDEPENDENT SCHOOL DISTRICT**

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SUMMARY

Time Warner's Response not only clarifies important facts, but it also significantly enhances the case made by the McAllen Independent School District ("MISD") for an emergency standstill order as a matter of law.

On the facts, Time Warner admits that it is seeking to recapture capacity that it had previously dedicated for community use in order to further *its own* commercial offerings. The company recognizes that after its PEG digitization, consumers will need to take additional steps and endure additional costs to view PEG channels but not other channels. Even though Time Warner could easily have told the Commission how many analog customers it has, and how many boxes it has actually installed, the company does not do so. Nonetheless, the record in this proceeding reveals a significant problem in South Texas. Perhaps most importantly, Time Warner's Response and its recent actions indicate that the neither Time Warner, nor any other company, would be harmed by a temporary standstill.

On the law, Time Warner's Response significantly enhances the case for a temporary standstill order – and also shows why such an order is necessary and appropriate. Time Warner takes the position that: (a) all local franchises that require companies to provide PEG channels as part of basic service, or that otherwise condition the provision of PEG channels, are preempted; and (b) the company has the authority to offer PEG channels on any tier, at any price, and in any manner it chooses. The

company can treat PEG channels differently than other channels; it can require special equipment; and it can refuse to provide the PEG channels altogether unless a subscriber makes a special request for the channels. Whether federal law grants such control over PEG channels to a cable operator is the question at the core of this proceeding, and it has been extensively briefed. Absent an order from the Commission, many operators (other than Comcast, which has committed to migrate PEG channel to digital at the same time as other basic channels) can be expected to act on the AT&T-Time Warner view of the law, which is extraordinary in light of the language of the Cable Act, its legislative history, and the long history of PEG in this country.

With respect to the merits of the underlying Cable Act dispute, Time Warner makes a critical admission: editorial discretion includes not only choices about “programming,” but also about the “mix of analog and digital programming that will appeal to consumers.” MISD agrees. The problem is that Section 611(e) of the Communications Act prohibits a cable operator from exercising this editorial discretion with respect to PEG channels.¹ Yet Time Warner is now exercising *precisely* this editorial control in its choices as to how to present and transmit PEG programming. Since the parties are aligned in this view of Section 611(e), the FCC is *very likely* to rule in favor of MISD on the merits. Although Time Warner attempts to distract the Commission by raising issues under particular franchise agreements, the Commission

¹ 47 U.S.C. § 531(e).

need not address such issues in this docket, which solely concerns a cable operator's general obligations under the Cable Act.

Time Warner also fails to rebut MISD's showing that it will be irreparably harmed by its PEG digitization. Although the company has implemented a limited program to provide a single converter to certain subscribers for a limited time, and only if these subscribers take affirmative action to obtain such a converter, this cannot eliminate the irreparable harm to MISD and others. What is clear is that many subscribers will not be receiving the PEG channels, and Time Warner does not contend otherwise. The issue remains Time Warner's interference with MISD's ability to communicate with subscribers. Moreover, as of this writing, the company still has not provided MISD with a single converter to allow students and teachers to view MITV 17 within the schools. In the PSJA ISD, Time Warner has yet to provide, and it is not clear when it will provide, the equipment required to permit the school district to view PEG in its own classrooms. As a speaker, MISD (and PSJA, along with others) are likely to be irreparably harmed.

Time Warner also fails to show that it (or anyone else) would be harmed by a limited standstill. The company has now agreed to extend the digitization deadline twice, which suggests such delays do not harm the company. In addition, a standstill order would not prohibit the company from achieving its HD and broadband goals by digitizing its own commercial content. And despite Time Warner's objections, MISD's

claims about the public interest remain: over 6000 comments have been filed in this proceeding. The public interest is best served if the Commission resolves the critical Cable Act issues pending in this docket *before* cable operators move ahead with their plans to make PEG channels less available to subscribers in communities across Texas and across the country.

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The McAllen Independent School District (“MISD”) and the Pharr-San Juan-Alamo Independent School District (“PSJA ISD”) submit this reply to the Response filed by Time Warner Cable (“Time Warner”) in the above-captioned docket on September 29, 2010.²

I. TIME WARNER’S RESPONSE REVEALS THAT ITS PEG DIGITIZATION DEPENDS ON AN EXTRAORDINARY VIEW OF THE PEG OBLIGATIONS THAT ARE AT ISSUE IN THIS DOCKET.

Time Warner’s Response shows that its PEG Digitization depends on issues pending in this docket. To its credit, Time Warner does not hide the fact that it is attempting to reclaim capacity that it had dedicated for community use in order to further its own commercial interests. The company explains that it seeks to use the

² On September 30, 2010, MISD filed a Partial Reply, which this reply supplements and completes.

dedicated capacity to provide “HD programming options and faster internet speeds,” and to expand its “Start Over” service.³

Time Warner claims that its customers “demand and expect” these services.⁴ Of course, Time Warner is not saying that it actually gives its customers the right to whatever channels they may “demand” or “expect.” Instead, Time Warner is saying that it wishes to take over capacity designated for PEG use because it furthers the company’s commercial interests. Time Warner does not contend that the PEG capacity is the only analog capacity that it could digitize; the company’s channel line-up for McAllen shows it is not.⁵ Rather, Time Warner’s contention, clarified at pp. 13-15, is that it has unlimited authority to provide PEG channels on any tier it desires, at any price it selects, and while requiring any equipment it chooses. Time Warner does not actually have to provide the PEG channels to subscribers; rather, it can provide the channels in a format so that, in order to obtain the channels, the subscriber must make a special request.

Time Warner’s view depends on principles at the heart of this proceeding. First, Time Warner must argue that the only limits on its control over PEG channels are with respect to the *content* of the PEG channels. But the Alliance for Community Media (“ACM”) and other commenters in this docket (and now MISD and PSJA ISD) have

³ Response at 3, 4.

⁴ *Id.* at 3, 4.

⁵ Time Warner Cable Rio Grande Valley Channel-Lineup, attached hereto as Exhibit A.

argued that by its express terms, the Cable Act sweeps more broadly, and prevents the operator from exercising “editorial control” over the “use” of the “channel capacity.”⁶ Likewise, ACM (and now MISD) has argued that (absent express, contrary provisions in a franchise agreement) where an operator is required to designate channel capacity for PEG use under Section 611, this obligation by definition requires the operator to provide an end-to-end service to each subscriber. The provision cannot be conditioned on subscriber requests, nor can an operator create barriers to channel accessibility – whether those are price barriers, equipment barriers, or functionality barriers. *See infra*.

Given the overlap in the proceedings, it is entirely appropriate for the Commission to resolve these issues in this docket. Time Warner’s position shows it is necessary to resolve the issues rapidly to prevent Time Warner and others from disadvantaging PEG channels while the matter is pending. And contrary to Time Warner’s contention, the balance of interests clearly allows the Commission to extend this basic protection.

⁶ Petition for Declaratory Ruling of ACM *et al.*, MB Docket No. 09-13, at 30.

II. A TEMPORARY STANDSTILL ORDER REMAINS APPROPRIATE.

A. Time Warner's Response Confirms That the FCC Is Likely To Rule That the PEG Digitalization Involved Here Is Unlawful.

1. *Time Warner's Concession Regarding the Scope of "Editorial Discretion" Should Remove Any Doubt That Its Actions Are a Form of Prohibited "Editorial Control."*

Time Warner attempts to convince the Commission that Section 611(e) of the Communications Act,⁷ which prohibits cable operators from exercising any editorial control over the "use" of PEG "channel capacity," must be read only to preclude the operator from controlling the content of PEG channels. But Time Warner's own Response acknowledges that editorial control extends beyond "content control," and includes choices about how to deliver and format programming.

Time Warner recognizes that editorial control normally extends beyond choices about content. Indeed, to defend its digitization of the PEG channels, Time Warner states the point clearly: a cable operator's "editorial discretion" includes not only the ability to "choose programming" but *also* the ability to "choose a mix of analog and digital programming that will appeal to consumers."⁸ Here, of course, Time Warner may not be choosing PEG programming, but it is clearly making basic editorial choices

⁷ 47 U.S.C. § 531(e).

⁸ Response at 14-15.

about the PEG formatting mix that will be presented to the community. The Cable Act expressly prohibits this editorial control.⁹

When Congress was only concerned about the control of “content,” it said so.¹⁰ The bar on “editorial control” in Section 611(e) is broader. Moreover, none of the cases cited by Time Warner compels the Commission to read Section 611(e) narrowly. In the *Dearborn* case, the judge refused to read Section 611(e) more broadly in part because the FCC had not issued a regulation reading it more broadly.¹¹ That hardly provides persuasive precedent as to the meaning of Section 611(e). Other cases cited by Time Warner are similarly unhelpful.¹² These cases involved efforts to define what conduct crosses the line between prohibited editorial control and permitted channel management. In the cases, the cable operator (as opposed to a school, the City, or a non-profit) managed the PEG channel, and necessarily was required to come up with rules for deciding what speaker would be allocated what time slot. In *Morrone v. CSC Holdings Corp.*, 363 F. Supp. 2d 552, 556 (E.D.N.Y. 2005), the court upheld rules because they were “non-discriminatory.” A parallel state proceeding is more enlightening: the

⁹ Time Warner argues that divesting it of this editorial control would violate its First Amendment rights. But Time Warner has already argued – and lost the argument – that the provisions of the Cable Act divesting it of control of PEG channels violates the First Amendment. *Time Warner Entertainment Co. v. FCC*, 93 F.3d 957, 973 (D.C. Cir. 1996).

¹⁰ 47 U.S.C. § 544 (f)(1).

¹¹ *City of Dearborn v. Comcast of Mich. III*, Order Denying in Part Plaintiffs’ Motion for Partial Reconsideration, No. 08-10156 (E.D. Mich. Nov. 25, 2008).

¹² The statutory term “editorial control” under Section 611(e) is certainly broad enough to allow the FCC to adopt this reasonable reading, notwithstanding any preceding court decisions. *NCTA v. Brand X Internet Servs.*, 545 U.S. 967, 980-81 (2005).

rules were upheld based on Cablevision's representation that it "exercises no discretion in scheduling public access channel time, and each producer has an equal opportunity to select a particular public access time slot."¹³ Here, as noted above, Time Warner contends that it is exercising "editorial discretion." Time Warner did not pick PEG channels for digitization by chance. If Time Warner moves ahead with its plans, Time Warner will provide PEG channels so that they are the only basic service channels for which a subscriber must make a special request. The pleadings in this matter quote legislative history at length to show that Congress intended to prohibit this type of discrimination, and desired PEG channels to be available to all. In the initial petition, MISD pointed out that PBS's definition of "editorial control" would reach this conduct. Time Warner does not even address the point.

Time Warner cannot seriously argue that the ordinary meaning of "editorial control" is too narrow to reach its formatting choices with respect to PEG. A simple example makes this clear. A newspaper editor tasked with preparing the Sunday morning edition finds two articles written by his staff on his desk. The first article—the PEG Article—contains information about the public, educational, and governmental events in the community. The second article—the Entertainment Article—contains the latest entertainment news. The PEG Article is highly valued by certain segments of the

¹³ New York Public Service Commission, Petitions of the Town of Brookhaven and Annie McKenna Faraldo Regarding the Procedures of Cablevision Systems Corporation for Administering the Public Access Channel Serving the Towns of Huntington and Brookhaven, Case 05-V-0310 (July 22, 2005).

community (especially to vulnerable populations with limited access to other media), but the article does not have widespread commercial appeal. On the other hand, the Entertainment Article titillates: it has broad appeal and is sure to sell newspapers to the masses and generate more profits. If the editor chooses to run the entertainment article, and not run the other, that is a clear exercise of editorial control. But the editor also exercises editorial control by making one article available to all subscribers, and making the other available only on a website, where subscribers must register, request the article, and pay an additional fee. And this act of editorial discretion can be almost as effective in preventing or limiting the dissemination of the information the editor chooses to favor as a decision not to carry it at all.

To be sure, one can respect the right of the newspaper editor to make these choices, just as one can respect the right of the cable operator to make these choices with respect to the channels it controls. But the point of Section 611(e) is to treat PEG channels differently: they are not subject to this editorial control. The Commission is therefore likely to find at the very least that actions that materially affect the accessibility and availability of PEG programming violate Section 611(e).¹⁴ PEG

¹⁴ The Television and Cable Factbook for communities served from Time Warner's Harlingen headend (which serves communities including McAllen) reports that Time Warner has 109,000 basic service subscribers, of which 32,561 are also digital service subscribers. That data suggests that more than half of all subscribers could lose PEG channels. Television and Cable Factbook 2009, Warren Communications News, Volume 2. If Comcast had been allowed to move ahead with its digitization plans in Michigan, as many as 500,000 customers could have been affected. *City of Deaborn v. Comcast of Mich III, In.*, Verified Complaint at ¶ 37 (Jan. 10, 2008).

Digitization Plans that would be affected by the standstill order do have that effect.¹⁵

2. *Time Warner Fails To Rebut the Showing That The FCC Is Likely To Find That Its Actions Violate Other Provisions of the Act.*

Time Warner also fails to rebut the showing that the FCC is likely to conclude that selective digitization of PEG channels violates other provisions of the Act. This docket asks the Commission to clarify what obligations are created when an operator is required to “designate” “channel capacity” for “public, educational and governmental use.” As ACM and others have pointed out, the terms are not defined. However, courts have recognized that the terms establish a “framework for these franchise agreements: that the channels be set aside for public, educational, and governmental use.” *Time Warner Cable of New York City v. City of New York*, 943 F. Supp. 1357, 1367 (S.D.N.Y. 1996), *aff’d on other grounds*, 118 F.3d 917 (2d Cir. 1997). “Congress’s meaning and intent” with respect to PEG channels “is apparent from the legislative history of the Cable Act.” *Id.* As Justice Kennedy explained, PEG channels must “comport in some sense with the industry practice to which Congress referred in the statute.” *Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. 727, 790 (1996). That

¹⁵ This “non-discrimination” principle also explains why it is not a violation of the Cable Act to provide PEG channels in a digital format when all other channels are provided in a digital format. Absent some other constraints, if all channels are digital, the PEG channels are as available as every other channel. In other words, when Time Warner’s system is all-digital, presenting PEG channels in a digital format does not reflect an editor’s presentation choices. There is no choice to be made. But today—when the system is subdivided between a format that reaches all subscribers in the community and a format that only reaches certain subscribers, there is room for a cable operator to exercise discretion in order to shuffle channels to its own advantage. The operator may shuffle its own commercial content as it pleases, but—under Section 611(e)—PEG channels are not inputs subject to the operator’s control.

“industry practice,” as reflected in the legislative history, places the operator in a position of acting as a mere conduit, with a duty (in the absence of an express franchise provision to the contrary) to deliver programming to all subscribers. The cable operator is relegated “pro tanto, to common carrier status”¹⁶ – which means, at the very least, the operator cannot discriminate against PEG channels and in favor of its own commercial offerings, as Time Warner proposed to do here. To MISD argument’s on this point, supported by case law and by the legislative history, Time Warner has no real answer – except to suggest that it is entitled to exercise “editorial discretion.” In light of Section 611(e), that is no answer at all.

MISD argued, finally, that the Commission is likely to find that Time Warner’s actions are inconsistent with the operational and technical standards adopted by the Commission for reasons suggested in the ACM petition. Time Warner argues that the claims raised in the ACM petition regarding quality have no bearing on its actions.¹⁷ Actually, ACM argues forcefully that the requirements create a non-discrimination obligation that would apply to the digitization of PEG channels.¹⁸ The issue is plainly teed up, and is likely to be resolved in a manner that prevents discrimination against PEG channels.

¹⁶ *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700-01 (1979).

¹⁷ Response at 17.

¹⁸ ACM Petition at 31.

3. *Time Warner's Discussion of Section 623(b)(7) Is Substantively In Error, But Is Also Irrelevant.*

While Time Warner spends a great deal of time discussing Section 623(b)(7) of the Communications Act,¹⁹ MISD's petition barely discusses the issue.²⁰ Time Warner's discussion does not affect the availability of the relief that MISD and PSJA ISD have requested here.

Time Warner's discussion of Section 623(b)(7) is notable for at least one reason, however. Time Warner argues that Section 623(b)(7) actually preempts any state or local requirement that independently require that PEG channels be provided on basic, or that otherwise establishes requirements with respect to the provision of PEG. This is an extraordinary proposition, particularly since (as the McAllen franchise shows) Time Warner voluntarily agreed to such conditions after Section 623(b)(7) was enacted. It is also plainly erroneous, among other reasons because Section 611(c) expressly permits a franchising authority to enforce any provision in a franchise with respect to PEG. But the very fact that Time Warner would raise the argument illustrates why it is important for the FCC to protect PEG channels not just in Texas, but elsewhere, and to move quickly to a resolution of this docket. Unless it does so, there is no security for PEG.

¹⁹ 47 U.S.C. § 543(b)(7).

²⁰ MISD addressed the point primarily in the context of underscoring Congress' intent with respect to PEG channels. While MISD certainly believes that Time Warner, post-digitalization, will not be providing PEG on the basic service tier, the petition did not list that as an independent ground for relief here.

Otherwise, the arguments Time Warner raises with respect to the applicability of Section 623(b)(7) are not new, and have been addressed in the many pleadings filed in this docket. What those pleadings show is that the Commission's rulings with respect to the obligation to carry PEG on basic fall into two categories. Time Warner relies on several cases where the Commission addressed Section 623(b)(7) in dicta. But when the Commission has directly addressed PEG obligations, it has concluded that the obligation to provide PEG channels on basic is "inescapable" even with respect to providers who are plainly subject to effective competition.²¹

Nothing in Section 623 requires a contrary conclusion. Section 623(a)(1) provides that a state, federal, or local government may only regulate rates as provided therein and in Section 612.²² Section 623(b)(2) provides that "[i]f the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation."²³ Statutory provisions that go beyond rate regulations are not affected by the presence or absence of effective competition.²⁴ The legislative history makes clear that the requirement serves purposes in addition to rate regulation:

²¹ *In re Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems*, 11 FCC Rcd. 20227 (1996), 11 FCC Rcd. at 18304.

²² 47 U.S.C. § 543(a)(1).

²³ 47 U.S.C. § 543(b)(2).

²⁴ *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd. 4316, 4361-62 ¶¶ 127-28 (1994).

The Committee believes that PEG access programming is an important complement to local commercial and noncommercial broadcasting to ensure that the government's compelling interest in fostering diversity and localism. . . . It has been demonstrated that where PEG channels exist, these interests have been well served. PEG programming is delivered on channels set aside for community use in many systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge. Public access provides ordinary citizens, non-profit organizations, and traditionally underserved minority communities an opportunity to provide programming *for distribution to all cable subscribers . . .*.²⁵

The FCC, after reviewing the 1992 legislative history, ruled that “[g]iven this clear congressional direction and the evidence of the importance attached to PEG channels, we require a cable operator to carry PEG channels on the basic tier unless the franchising agreement explicitly permits carriage on another tier.”²⁶ That holding has never been overturned by any court, and remains the law.

Nor can Time Warner undercut the arguments on the merits by stating that it is entitled to convert the PEG channels to a digital format under the McAllen franchise. MISD seeks a determination of PEG rights under *federal law*.²⁷ The specifics of the

²⁵ H. Rep. No. 102-628 at 85 (emphasis added).

²⁶ *In re Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd. 5631, 5738-38, MM Docket No. 92-266 (1993) (emphasis supplied).

²⁷ *See, e.g.*, Emergency Petition at 12-13 (“It is therefore appropriate in this proceeding for the Commission to issue a standstill order that protects all PEG providers, throughout the nation, from changes in the *status quo* that existed at the time the petitions in this matter were originally filed.”).

McAllen franchise, or of any franchise, need not be considered for the Commission to clarify the Cable Act issues pending in this docket.²⁸

B. The Failure To Issue the Temporary Standstill Would Cause Irreparable Harm.

Time Warner dismisses MISD's claims of irreparable harms as "speculative" and based on "unsubstantiated and incorrect suppositions."²⁹ MISD in fact provided specific examples, based on its experience in communicating with students and the public, as to how it and others will be irreparably harmed when substantial portions of the community lose access to the PEG channels.³⁰

Time Warner's other challenges to MISD's showing are no more convincing. Time Warner states that nearly half of McAllen's residents do not subscribe to Time Warner.³¹ But that means that a majority of the City does rely on Time Warner, and the loss of a substantial portion of that audience is significant. Congress adopted the PEG provisions of the Cable Act at a time when cable penetration was lower – and the

²⁸ While the Commission need not and should not reach the issue, Time Warner is wrong on the merits. Time Warner ignores the critical conditions on digitization in the franchise: the channels must be available to all subscribers, and must be part of basic service. MISD does not object to digitization *per se* – if all channels were being digitized, all subscribers would be able to receive digital programming. What MISD objects to is the discriminatory and selective digitization of PEG channels, such that the channels will not be available to all subscribers. This is prohibited by the franchise.

²⁹ Response at 18.

³⁰ Emergency Petition at 23-24.

³¹ Response at 18.

legislative history is clear that Congress thought that the channels served a critical public purpose.

Time Warner also claims that MISD would not be irreparably harmed by its digitization because it could always seek to use alternative means of communication. “MISD could stream MITV 17 over the Internet just as McAllen does with MCN 12.”³² But this is little more than an argument that PEG channels serve no significant purpose at all (as there are, and always have been, alternative ways to communicate). Congress has consistently and forcefully rejected this view – it adopted the PEG provisions to allow PEG users to utilize this powerful communications tool. And the argument is particularly disingenuous in light of the facts in this docket. MISD itself affirmed that many of those it seeks to reach rely on television as a source of critical information.³³ The Commission is well aware that heavily Hispanic, low-income areas lag in adoption of the Internet.³⁴ MISD showed that the population it serves is heavily Hispanic and low-income. To suggest that there is no harm because the information is available via the Internet is to suggest that, to advance Time Warner’s commercial interests, the company should be allowed cut off a substantial portion of the community from public health information.

³² Response at 19.

³³ Declaration of James J. Ponce ¶ 4.

³⁴ See, e.g., U.S. Department of Commerce, NTIA, Digital Nation: 21st Century America’s Progress Toward Universal Broadband Internet Access (Feb. 2010) at 8.

Finally, Time Warner's claim that the harm to MISD is not irreparable because Time Warner subscribers could take rather onerous and, in some cases, costly steps to obtain the PEG channels³⁵—is unsound. It assumes that Time Warner has the right to place the burden on subscribers and on PEG – which it does not. Time Warner bears the burden to ensure the channels are available to all subscribers; shifting that burden is part of the harm. The argument also ignores the limitations on Time Warner's converter program: a subscriber must request a converter within a specified period; a converter is free to most customers for only a limited period; a subscriber, except those with disabilities or who are mobility-limited, must pay to have a converter delivered or for installation assistance; the offer will not apply to new subscribers; and the converter must be separately requested – it will not be automatically available. In light of the serious limitations in these plans, there are good reasons to believe that MISD's ability to communicate with the larger community will be harmed.³⁶

Time Warner might have more of a point if it could show that its converter program had in fact resulted in distribution of converters to all subscribers who take the analog tiers. But Time Warner notably fails to claim this. The company also does not deny the claim that a substantial percentage of the population takes analog services.

³⁵ Time Warner's suggestions include obtaining internet service (presumably from Time Warner) and finding the programming online; finding the channel on television reception equipment with a QAM tuner, or obtaining and installing a converter box from Time Warner during a specified 60 day window. Response at 5-6, 18-20.

³⁶ Declaration of James J. Ponce ¶ 10.

Based on its familiarity with the community, MISD affirmed that the burdens placed on subscribers would mean that PEG channels would not be available to a substantial portion of the community. Perhaps over time subscribers will obtain the necessary equipment to receive the PEG channels, or Time Warner will actually make the changes required to make the channels available to schools and multiple dwelling units (converters will not address the availability in some institutions, like nursing homes). But courts have long recognized that the loss of speech rights “for even minimal periods of time, unquestionably constitutes irreparable injury.”³⁷

At a meeting on October 5, 2010, counsel for Time Warner and for the MISD and PSJA ISD promised the Commission that they would keep the Commission apprised as to the progress of the company’s converter distribution program. This will be done separately, as facts are gathered, but as of this writing, a majority of the MISD and PSJA schools cannot receive service. Time Warner’s implementation of its program does not appear to be consistent across Texas, or even in the communities that have filed suit against the company. The process began with Time Warner asking the schools how many converters were required. Determining the number is not simple; schools that took the request seriously had to determine not just how many televisions were in place, but how many were connected to cable. Once the information was developed, it turned out to be insufficient; Time Warner needed to schedule site visits. And it now

³⁷ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

appears that Time Warner has not installed, and is not planning to install converter boxes to every television. In at least one community, a Time Warner representative stated that not every television in a school that needs a converter is entitled to one.

The harm to the school districts' ability to communicate with the larger community and with their own teachers and students is real, substantial, and irreparable.

C. Time Warner Would Not Be Harmed As It Claims By a Temporary Standstill Order.

Time Warner would not be harmed as it claims by a temporary standstill order. As discussed, *supra*, Time Warner would have the Commission believe that it will suffer irreparable harm "to its competitive position and good will" if it is not able to reclaim PEG channel capacity and use it to provide additional HD programming and faster internet speeds to its customers.³⁸ The only evidence offered to support its claims is that Time Warner indicates it has expended resources to plan its digitization, and to advertise new HD programming and faster internet speeds.³⁹

But Time Warner's argument rests on a critical and completely unsupported assumption: that Time Warner cannot take the steps it has described unless it digitizes PEG channels. In fact, the channel line-ups reveal that Time Warner is providing subscribers many commercial, non-broadcast channels. Time Warner does not suggest

³⁸ Response at 21.

³⁹ *Id.*

otherwise. Thus, Time Warner can obtain capacity by doing what it should do in any case: exercising its control over *its own* commercial capacity. And of course, Time Warner could always go all-digital, which would make even more capacity available.

D. A Temporary Standstill Order Will Further the Public Interest.

Time Warner fails to show that a temporary standstill would not further the public interest. Time Warner claims that “the issues pending in this docket are factually and legally distinct from the PEG digitization in McAllen.”⁴⁰ But that is wrong. As MISD has shown, the petitions in this docket raise general issues under the Cable Act that, when clarified, could affect operators’ plans to digitize PEG channels across the country. Over 6,000 comments have been filed in this proceeding, and the public would benefit from resolution of issues before events overtake the issue and effectively eliminate the Commission’s jurisdiction.

Time Warner claims that a standstill order would undermine “the core objective, enshrined in the Cable Act and advanced by the Commission, of encouraging competition and deployment of new and innovative communications services that benefit consumers.”⁴¹ At base, this is an argument that the Commission should favor its commercial interests, because it will be disadvantaged in its competition with others if it is required to deliver PEG channels without interference or special conditions.⁴²

⁴⁰ Response at 22.

⁴¹ Response at 23.

⁴² Response at 2, 3.

Factually, this argument is misguided for at least two reasons. First, as noted above, protecting PEG channels does not prevent Time Warner, or any operator, from competing by managing its own commercial offerings, or by expanding its system capacity. Second, while DBS providers (the competitors to which Time Warner points) are not subject to PEG requirements (because they do not receive the benefits of a cable franchise), these providers are required to dedicate at least 4% and as much as 7% of their system capacity to educational uses.⁴³ Given Time Warner's concession that its systems are 750 – 850 MHz, this would equate to a minimum of roughly 30 – 34 MHz – far more than it is providing to McAllen today even using analog capacity. The FCC has concluded that OVS providers have an inescapable duty to provide PEG access channels “to all subscribers.”⁴⁴

More importantly, the Cable Act does not simply give an operator carte blanche to serve its interest. In return for valuable rights to use public and private property, it requires the operator to satisfy certain public interest requirements. By definition, these public interest requirements cannot be escaped or evaded merely because it suits the operator's interest to do so, or because Congress has chosen not to impose the same obligations on certain types of providers.⁴⁵ What the Cable Act “enshrines” in

⁴³ 47 U.S.C. § 335.

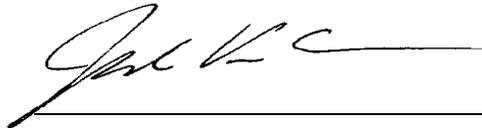
⁴⁴ *In re Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems*, 11 FCC Rcd. 20227 (1996), 11 FCC Rcd. at 18304.

⁴⁵ In addition, the company fails to examine what other steps it could have taken to provide these commercial services. For example, Time Warner notes that its systems “have a maximum

legislative history and text is the obligation to dedicate capacity for the community's use, not the right of an operator to do as it chooses. While Congress certainly meant to foster competition, it made no suggestion that competition should proceed at the expense of this key public interest obligation.

A standstill order would maintain the public interest/commercial interest balance that Congress struck in the Cable Act.

Respectfully submitted,



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October 7, 2010
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bandwidth of either 750 or 870 MHz of spectrum," but the company fails to explain where in Texas it has chosen to upgrade to 870 MHz. The company also does not explain why it is not digitizing its own commercial channels before PEG channels.

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

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

Respectfully submitted,

October 7, 2010

A handwritten signature in black ink, appearing to read 'Joseph Van Eaton', written over a horizontal line.

Joseph Van Eaton

Miller & Van Eaton, P.L.L.C.

1155 Connecticut Avenue, N.W., Suite 1000

Washington, DC 20036-4306

(202) 785-0600

Basic Service Tier

2	KTLM (Telemundo)
3	KNVO (Univision)
4	KGBT (CBS)
5	KRGV (ABC)
6	XHRIO (FOX/My Network TV)
7	XHAB (Televisa)
8	KVEO (NBC)
9	KLUJ (TBN)
10	KMBH (PBS)
11	XHOR (TV Azteca 7)
12	Government Access (Digital Set-Top Required)
13	XHMTA (Azteca 13)
17	Educational Access (Digital Set-Top Required)
19	XERV (Televisa)
20	KVTF (Telefutura)
21	KSFE (CW)
22	C-SPAN
99	QVC
618	XHRIO (FOX)
619	Mexicanal
866	Mexicanal (KGBT)
877	KRGV (RTN)

Local HD Service

860	KVEO (NBC) HD
865	KGBT (CBS) HD
870	XHRIO (FOX/My Network TV) HD
875	KRGV (ABC) HD
885	KNVO (Univision) HD

Expanded Basic Tier

23	Leased Access
24	Cartoon Network
25	Disney Channel
26	nick
27	Discovery Channel
28	TLC
29	Animal Planet
30	Travel Channel
31	History Channel
32	Golf Channel
33	National Geographic
34	The Weather Channel
35	CNN
36	HLN
37	Fox News Channel
38	MSNBC
39	Texas Cable News
40	CNBC
41	truTV
42	AMC
43	Turner Classic Movies
44	tbs
45	Spike Television
46	A&E
47	Turner Network Television
49	USA
50	Lifetime
51	SyFy East
52	FX
53	C-SPAN 2
54	TV Land
55	Lifetime Movie Network
56	E!
57	EWTN
58	INSP Channel
59	Hallmark Channel
60	ESPN
61	ESPN2
62	Fox Soccer Channel
63	FS Southwest
65	Great American Country
66	VH1
67	MTV
68	Galavision
69	mun2
70	FOX Sports en Espanol

71	Comedy Central
72	HGTV
73	Food Network
75	Bravo
76	WE
77	ShopNBC

Standard HD Service

890	HD Theater
893	TNT HD
894	FS Southwest HD
895	ESPN HD
896	ESPN2 HD
904	tbs HD
1105	ABC Family HD
1112	Hallmark Channel HD
1126	Disney Channel HD
1127	Disney XD HD
1130	Cartoon Network HD
1201	Planet Green HD
1203	LMN HD
1205	WE HD
1208	HGTV HD
1209	Food Network HD
1210	Travel Channel HD
1216	Spike HD
1251	TLC HD
1252	Discovery Channel HD
1253	Animal Planet HD
1254	National Geographic Channel HD
1272	Science Channel HD
1304	FS Southwest HD
1308	FOX Soccer Channel HD
1311	Golf Channel HD
1313	Speed HD
1350	CNN HD
1352	HLN HD
1353	MSNBC HD
1354	CNBC HD
1356	FOX News Channel HD
1364	The Weather Channel HD
1400	USA HD
1403	FX HD
1420	TCM HD
1421	AMC HD
1450	Syfy HD
1452	Comedy Central HD
1455	Bravo HD
1457	truTV
1458	A&E HD
1509	MTV HD
1511	Palladia

Digital Standard Service

48	ABC Family
64	CMT
74	Oxygen
97	Speed
881	KMBH (PBD)
882	KMBH (V-me)

Digital Service Tier

1	Video On Demand
104	TV Land
105	ABC Family
106	GSN
112	Hallmark Channel
120	Nick Jr
121	Discovery Kids
122	Teen Nick
123	Nick Toons
125	Boomerang
126	Disney Channel
127	Disney XD
129	nick
130	Cartoon Network
150	EWTN
152	INSP Channel
153	Daystar
155	GMC

200	Style
201	Planet Green
202	Lifetime Real Women
203	Lifetime Movie Network
204	Lifetime
205	WE tv
206	Oxygen
207	SOAPnet
208	HGTV
209	Food Network
210	Travel Channel
211	QVC
212	ShopNBC
213	Celebrity Shopping
216	Spike TV
218	FitTV
230	Cooking Channel
250	Discovery Health
251	TLC
252	Discovery Channel
253	Animal Planet
254	National Geographic
255	History Channel
265	bio
270	DIY
271	Investigation Discovery
272	The Science Channel
274	Military Channel
277	History International
300	ESPN
301	ESPN2
303	ESPNews
304	FS Southwest
308	FOX Soccer Channel
309	CBS College Sports Network
310	NBA TV
311	Golf Channel
315	Sportsman Channel
318	ESPNU
320	MLB Network
350	CNN
352	HLN
353	MSNBC
354	CNBC
356	FOX News Channel
357	Bloomberg
358	FOX Business Network
359	Current TV
360	Texas Cable News
361	C-SPAN
362	C-SPAN 2
363	C-SPAN 3
364	The Weather Channel
366	KGBT (CBS) Action 4 News Weather
400	USA
401	TNT
402	tbs
403	FX
419	Video On Demand Previews
420	Turner Classic Movies
421	AMC
424	Independent Film Channel
450	SyFy East
451	G4
452	Comedy Central
453	Nat Geo Wild
455	Bravo
456	Sleuth
457	truTV
458	A&E
459	BBC America
460	E!
461	SiTV
463	Video On Demand Previews
465	Chiller
501	Fuse
503	VH1
505	CMT
506	Great American Country

507	VH1 Classic
508	MTV Hits
509	MTV
512	MTV2
612	Galavision
613	KTFV (Telefutura)
616	Multimedios
626	FOX Sports en Espanol
775	Sundance Channel East
800	Video On Demand Previews
803	Kids On Demand/Pre-School
804	Cutting Edge On Demand
806	HD Showcase On Demand
808	BBC America On Demand
809	History & Nature On Demand
810	Cutting Edge On Demand
812	Entertainment On Demand
813	Primetime On Demand
814	Lifestyle On Demand
821	TV Guide Network on Demand
822	Music On Demand
823	Music Choice Pop & Rock On Demand
824	Music Choic Urban & Latin On Demand
825	Sports On Demand
826	Exercise TV On Demand
829	Sportskool On Demand
836	Lo Mejor On Demand
839	Free Movies On Demand
876	KRGV (ABC) LATV
888	Texas Channel
889	Texas Channel en Espanol
985	Automotive On Demand
986	Movie Trailers On Demand
988	Find It on Demand
989	Journey TV On Demand
990	My Life On Demand
1277	History International HD

Digital HD Service

801	Answers On Demand
997	NASCAR 3D Track View
998	NASCAR 3D Pit View
1155	GMC HD
1230	Cooking Channel HD
1265	Bio HD
1271	Investigation Discovery HD
1303	ESPNews HD
1309	CBS College Sports Network HD
1310	NBA TV HD
1314	Versus HD
1318	ESPNU HD
1320	MLB Network HD
1358	FOX Business News HD
1425	Hallmark Movie Channel HD
1451	G4 HD
1453	Nat Geo Wild HD
1459	BBC America HD
1501	Fuse HD

EI Paquetazo Package

2	KTLM (Telemundo)
3	KNVO (Univision)
4	KGBT (CBS)
5	KRGV (ABC)
6	XHRIO (FOX/My Network TV)
7	XHAB (Televisa)
8	KVEO (NBC)
9	KLUJ (TBN)
10	KMBH (PBS)
11	XHOR (TV Azteca 7)
12	Government Access (Digital Set-Top Required)
13	XHMTA (Azteca 13)
17	Educational Access (Digital Set-Top Required)
19	XERV (Televisa)
20	KVTF (Telefutura)
21	KSFE (CW)
22	C-SPAN

99 QVC
 112 Hallmark Channel
 123 Nick Toons
 150 EWTN
 152 INSP Channel
 200 Style
 201 Planet Green
 207 SOAPnet
 208 HGTV
 209 Food Network
 210 Travel Channel
 230 Cooking Channel
 250 Discovery Health
 253 Animal Planet
 271 Investigation Discovery
 300 ESPN
 301 ESPN2
 305 FOX College Sports - Atlantic
 306 FOX College Sports - Pacific
 307 FOX College Sports - Central
 308 FOX Soccer Channel
 364 The Weather Channel
 366 KGBT (CBS) Action 4 News
 Weather
 420 Turner Classic Movies
 459 BBC America
 461 SiTV
 503 VH1
 505 CMT
 508 MTV Hits
 512 MTV2
 601 La Familia
 602 Boomerang en Espanol
 603 Disney XD en Espanol
 604 ¡Sorpresa!
 605 EWTN en Espanol
 606 Latela Novela
 607 Discovery en Espanol
 608 History en Espanol
 609 Discovery Familia
 610 Cartoon Network
 611 MEXICO TV
 612 Galavisión
 613 KTFV (Telefutura)
 615 Mexico 22
 616 Multimedios
 617 mun2
 618 XHRIO (FOX)
 619 Mexicana
 622 Video Rola
 623 TBN Enlace
 624 Once Mexico
 625 CNN en Espanol
 626 FOX Sports en Espanol
 627 ESPN Deportes
 628 Goltv
 631 Cine Latino
 650 Music Choice: Hit List
 651 Music Choice: Hip-Hop R&B
 652 Music Choice: MC Mix Tape
 653 Music Choice: Dance/Electronica
 654 Music Choice: Rap
 655 Music Choice: Hip Hop Classics
 656 Music Choice: Throwback Jamz
 657 Music Choice: R&B Classics
 658 Music Choice: R&B Soul
 659 Music Choice: Gospel
 660 Music Choice: Reggae
 661 Music Choice: Classic Rock
 662 Music Choice: Retro Rock
 663 Music Choice: Rock
 664 Music Choice: Metal
 665 Music Choice: Alternative
 666 Music Choice: Classic Alternative
 667 Music Choice: Adult Alternative
 668 Music Choice: Soft Rock
 669 Music Choice: Pop Hits
 670 Music Choice: 90's
 671 Music Choice: 80's
 672 Music Choice: 70's
 673 Music Choice: Solid Gold Oldies
 674 Music Choice: Party Favorites
 675 Music Choice: Stage & Screen
 676 Music Choice: Kidz Only
 677 Music Choice: Toddler Tunes
 678 Music Choice: Today's Country
 679 Music Choice: True Country
 680 Music Choice: Classic Country

258 Music Choice: Contemporary
 Christian
 259 Music Choice: Sounds of the
 Season
 260 Music Choice: Soundscapes
 261 Music Choice: Smooth Jazz
 262 Music Choice: Jazz
 263 Music Choice: Blues
 264 Music Choice: Singers & Swing
 265 Music Choice: Easy Listening
 266 Music Choice: Classical
 Masterpieces
 267 Music Choice: Light Classical
 268 Music Choice: Music Urbana
 269 Music Choice: Pop Latino
 270 Music Choice: Tropicales
 271 Music Choice: Mexicana
 272 Music Choice: Romances
 273 Video On Demand Previews
 274 Video On Demand Previews
 275 Answers On Demand
 276 Kids On Demand/Pre-School
 277 Kids On Demand
 278 HD Showcase On Demand
 279 BBC America On Demand
 280 History & Nature On Demand
 281 Cutting Edge On Demand
 282 Entertainment On Demand
 283 Primetime On Demand
 284 Lifestyle On Demand
 285 TV Guide Network On Demand
 286 Music On Demand
 287 Music Choice Pop & Rock On
 Demand
 288 Music Choice Urban & Latin On
 Demand
 289 Sports On Demand
 290 Exercise TV On Demand
 291 Sportskool On Demand
 292 Lo Mejor On Demand
 293 Free Movies On Demand
 294 KVEO (NBC) HD
 295 KGBT (CBS) HD
 296 XHRIO (FOX/My Network TV) HD
 297 KRGV (ABC) HD
 298 KRGV (ABC) LATV
 299 KRGV (RTN)
 300 KMBH (PBD)
 301 KMBH (V-me)
 302 ESPN HD
 303 ESPN2 HD
 304 Automotive On Demand
 305 Movie Trailers On Demand
 306 Find It on Demand
 307 Journey TV On Demand
 308 My Life On Demand
 309 HGTV HD
 310 Food Network HD
 311 Travel Channel HD
 312 Animal Planet HD

Mas Canales Tier

601 La Familia
 602 Boomerang en Espanol
 603 Disney XD en Espanol
 604 ¡Sorpresa!
 605 EWTN en Espanol
 606 Latela Novela
 607 Discovery en Espanol
 608 History en Espanol
 609 Discovery Familia
 610 Cartoon Network
 611 MEXICO TV
 612 Galavisión
 613 KTFV (Telefutura)
 615 Mexico 22
 616 Multimedios
 617 mun2
 622 Video Rola
 624 Once Mexico
 625 CNN en Espanol
 626 FOX Sports en Espanol
 627 ESPN Deportes
 628 Goltv
 631 Cine Latino

Mas Canales Dos Tier

623 TBN Enlace

HD/Sports Tier

302 ESPN Classic
 305 FOX College Sports - Atlantic
 306 FOX College Sports - Pacific
 307 FOX College Sports - Central
 310 NBA TV
 312 The Tennis Channel
 313 Speed Channel
 314 VERSUS
 317 FUEL
 321 NHL Channel
 322 Big 10 Network
 323 FOX Soccer Plus
 628 Goltv
 897 Smithsonian Channel HD
 898 MGM HD
 901 Universal HD
 909 MavTV
 1312 Tennis Channel
 1321 NHL Network HD
 1322 Big Ten HD
 1323 FOX Soccer Plus HD
 1324 ESPN Goal Line HD

HD Tier

897 Smithsonian Channel HD
 898 MGM HD
 901 Universal HD
 909 MavTV

Time Warner Cable Sports Pass

302 ESPN Classic
 305 FOX College Sports - Atlantic
 306 FOX College Sports - Pacific
 307 FOX College Sports - Central
 310 NBA TV
 312 The Tennis Channel
 313 Speed Channel
 314 VERSUS
 317 FUEL
 321 NHL Channel
 322 Big 10 Network
 323 FOX Soccer Plus
 628 Goltv
 1312 Tennis Channel
 1321 NHL Network HD
 1322 Big Ten HD
 1323 FOX Soccer Plus HD
 1324 ESPN Goal Line HD

Time Warner Cable Movie Pass

423 Fox Movie Channel
 761 Encore
 762 Encore Love
 763 Encore Westerns
 764 Encore Mystery
 765 Encore Action
 766 Encore Drama
 767 Encore Wam!
 768 Encore (West)
 769 Encore Love (West)
 770 Encore Westerns (West)
 771 Encore Mystery (West)
 772 Encore Action (West)
 773 Encore Drama (West)
 775 Sundance Channel East
 776 Sundance Channel - West
 1761 Encore HD

Premiums

700 HBO East
 701 HBO2
 702 HBO Signature
 703 HBO Family
 704 HBO Comedy
 705 HBO ZONE
 707 HBO Latino
 708 Home Box Office (West)
 709 HBO2 (West)
 710 HBO Signature (West)
 711 HBO Family (West)
 712 HBO Comedy (West)
 713 HBO ZONE (West)
 715 HBO Latino (West)
 716 Cinemax
 717 MoreMax

718 ActionMAX
 719 ThrillerMAX
 720 Women's Max
 721 @MAX
 722 5StarMAX
 723 OuterMAX
 724 Cinemax (West)
 725 MoreMax (West)
 726 ActionMAX (West)
 727 ThrillerMAX (West)
 728 Showtime
 729 Showtime Too
 730 Showtime Showcase
 731 Showtime Extreme
 732 Showtime Beyond
 733 Showtime Next
 734 Showtime Women
 735 Showtime Family Zone
 737 Showtime (West)
 738 Showtime Too (West)
 739 Showtime Showcase (West)
 740 Showtime Extreme (West)
 741 Showtime Beyond (West)
 746 The Movie Channel
 747 The Movie Channel Xtra
 748 The Movie Channel West
 749 The Movie Channel Xtra (West)
 750 Starz
 751 Starz InBlack
 752 Starz Kids and Family
 753 Starz Cinema
 754 Starz Edge
 756 Starz (West)
 757 Starz InBlack (West)
 758 Starz Kids and Family (West)
 759 Starz Cinema (West)
 760 Starz Edge - West

Premiums in HD

706 HBO East High Definition
 736 Showtime High Definition
 1701 HBO 2 HD
 1702 HBO Signature E HD
 1703 HBO Family HD E
 1704 HBO Comedy HD E
 1705 HBO Zone E HD
 1707 HBO Latino HD E * †
 1716 CineMAX E HD
 1717 MoreMAX HD E * †
 1718 ActionMAX HD E
 1719 ThrillerMAX HD E * †
 1720 WMAX HD E * †
 1721 @MAX HD E * †
 1722 5 StarMAX HD E * †
 1729 Showtime 2 HD
 1730 Showtime Showcae HD E
 1731 Showtime Extreme HD E
 1732 Showtime Beyond HD E * †
 1746 The Movie Channel HD E
 1747 The Movie Channel Extra E HD
 1750 Starz E HD
 1751 Starz In Black HD E * †
 1752 Starz Kids and Family HD
 1754 Starz Edge E HD

Premiums On Demand

1 Video On Demand
 848 HBO On Demand
 849 Cinemax On Demand
 850 Showtime On Demand
 851 The Movie Channel On Demand
 852 Starz On Demand

On Demand

857 Outrageous On Demand
 858 Events On Demand

Movies On Demand

1 Video On Demand
 837 Espanol On Demand
 840 Movies On Demand HD
 841 Movies On Demand
 843 Movies On Demand Hits
 844 TWC Movies Pass
 845 TWC Movie Pass HD
 846 Movies On Demand Kids & Teens
 847 Movies On Demand Thrillers
 853 Adult HD On Demand

854 Adult On Demand

Free On Demand

- 1 Video On Demand
- 800 Video On Demand Previews
- 801 Answers On Demand
- 803 Kids On Demand/Pre-School
- 804 Kids On Demand
- 806 HD Showcase On Demand
- 808 BBC America On Demand
- 809 History & Nature On Demand
- 810 Cutting Edge On Demand
- 812 Entertainment On Demand
- 813 Primetime On Demand
- 814 Lifestyle On Demand
- 821 TV Guide Network on Demand
- 822 Music On Demand
- 823 Music Choice Pop & Rock On Demand
- 824 Music Choic Urban & Latin On Demand
- 825 Sports On Demand
- 826 Excercise TV On Demand
- 829 Sportskool On Demand
- 836 Lo Mejor On Demand
- 839 Free Movies On Demand
- 985 Automotive On Demand
- 986 Movie Trailers On Demand
- 988 Find It on Demand
- 989 Journey TV On Demand
- 990 My Life On Demand

Subscription On Demand

- 1 Video On Demand
- 834 BEVO-D Longhorn Sports On Demand
- 855 Howard Stern On Demand

Family Choice Package

- 120 Nick Jr
- 121 Discovery Kids
- 125 Boomerang
- 126 Disney Channel
- 127 Disney XD
- 208 HGTV
- 209 Food Network
- 218 FitTV
- 270 DIY
- 272 The Science Channel
- 352 HLN
- 362 C-SPAN 2
- 363 C-SPAN 3
- 364 The Weather Channel
- 601 La Familia

Digital Pay-Per-View

- 920 iNDemand Previews
- 921 iNDEMAND
- 922 iNDEMAND
- 923 iNDEMAND
- 924 iNDEMAND
- 925 iNDEMAND
- 926 iNDEMAND
- 927 iNDEMAND
- 928 Special Events PPV
- 930 Hot Choice
- 931 Playboy - Adult
- 934 Fresh! - Adult
- 935 Shorteez - Adult
- 936 Spice Xcess - Adult
- 1957 Game HD (MLB/NHL)

Pay-Per-View Sports Package

- 939 NBA League Pass
- 940 NBA League Pass
- 941 NBA League Pass
- 942 NBA League Pass
- 943 NBA League Pass
- 944 NBA League Pass
- 945 NBA League Pass
- 946 NBA League Pass
- 947 NBA League Pass
- 951 ESPN Game Plan / ESPN Full Court
- 952 ESPN Game Plan / ESPN Full Court
- 953 ESPN Game Plan / ESPN Full Court
- 954 ESPN Game Plan / ESPN Full

- Court
- 955 ESPN Game Plan / ESPN Full Court
- 956 ESPN Game Plan / ESPN Full Court
- 957 MLB / NHL
- 958 MLB / NHL
- 959 MLB / NHL
- 960 MLB / NHL
- 961 MLB / NHL
- 962 MLB / NHL
- 963 MLB / NHL
- 964 MLB / NHL
- 965 MLB / NHL
- 966 MLB / NHL
- 967 MLB / NHL
- 968 MLB / NHL
- 969 MLB / NHL
- 970 MLB / NHL
- 1939 Team HD (NBA League Pass)
- 1958 MLB Extra Innings/NHL Center Ice 2 HD * †

Digital Music

- 650 Music Choice: Hit List
- 651 Music Choice: Hip-Hop R&B
- 652 Music Choice: MC Mix Tape
- 653 Music Choice: Dance/Electronica
- 654 Music Choice: Rap
- 655 Music Choice: Hip Hop Classics
- 656 Music Choice: Throwback Jamz
- 657 Music Choice: R&B Classics
- 658 Music Choice: R&B Soul
- 659 Music Choice: Gospel
- 660 Music Choice: Reggae
- 661 Music Choice: Classic Rock
- 662 Music Choice: Retro Rock
- 663 Music Choice: Rock
- 664 Music Choice: Metal
- 665 Music Choice: Alternative
- 666 Music Choice: Classic Alternative
- 667 Music Choice: Adult Alternative
- 668 Music Choice: Soft Rock
- 669 Music Choice: Pop Hits
- 670 Music Choice: 90's
- 671 Music Choice: 80's
- 672 Music Choice: 70's
- 673 Music Choice: Solid Gold Oldies
- 674 Music Choice: Party Favorites
- 675 Music Choice: Stage & Screen
- 676 Music Choice: Kidz Only
- 677 Music Choice: Toddler Tunes
- 678 Music Choice: Today's Country
- 679 Music Choice: True Country
- 680 Music Choice: Classic Country
- 681 Music Choice: Contemporary Christian
- 682 Music Choice: Sounds of the Season
- 683 Music Choice: Soundscapes
- 684 Music Choice: Smooth Jazz
- 685 Music Choice: Jazz
- 686 Music Choice: Blues
- 687 Music Choice: Singers & Swing
- 688 Music Choice: Easy Listening
- 689 Music Choice: Classical Masterpieces
- 690 Music Choice: Light Classical
- 691 Music Choice: Music Urbana
- 692 Music Choice: Pop Latino
- 693 Music Choice: Tropicales
- 694 Music Choice: Mexicana
- 695 Music Choice: Romances
- 699 Video On Demand Previews

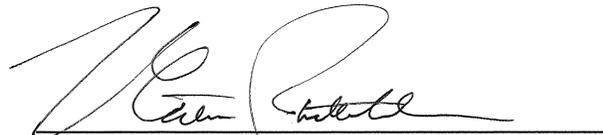
Adult

- 853 Adult HD On Demand
- 854 Adult On Demand
- 930 Hot Choice
- 931 Playboy - Adult
- 934 Fresh! - Adult
- 935 Shorteez - Adult
- 936 Spice Xcess - Adult

Certificate of Service

I hereby certify that I have caused to be sent this 7th day of October 2010,
a copy of the foregoing Reply, by e-mail and via first-class mail, postage prepaid,
to the following person:

Gardner Gillespie
Hogan Lovells
555 13th Street, N.W.
Washington, DC 20004-1109



Matthew K. Schettenhelm

Washington, D.C.

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