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November 23, 2010

VIA ELECTRONIC FILING SYSTEM (ECFS)

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

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees,* MB-Docket No. 10-56

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this *ex parte* notice is filed on behalf of the Alliance for Communications Democracy ("ACD") and the Alliance for Community Media ("ACM"). On November 22, 2010, Dan Coughlin, ACD board member and Manhattan Neighborhood Network ("MNN") Executive Director, Sylvia Strobel, ACM Executive Director, Jim Horwood of Spiegel & McDiarmid LLP, and the undersigned, met with Krista Witanowski, acting legal advisor on media issues to Commissioner Meredith Atwell Baker, regarding the above-captioned proceeding. Meeting participants discussed the PEG-related merger conditions proposed by ACD in its June 21 2010, comments in the proceeding, and amplified by ACD's August 19 reply comments. Participants discussed the attached outline summarizing ACD's position, which position is supported by ACM.

Participants also discussed an ACM November 2010 report performed by the Buske Group "Hours of First-Run, Locally-Produced PEG Access Programs During 2009" and an ACD April 2010 report performed by Group W Communications, LLC, "Aggregate Data on Cable Viewership." Both reports are attached to this filing.

A copy of this letter with the above-mentioned attachments is being filed via ECFS with your office. Please do not hesitate to contact me if you have any questions.

Sincerely,

Gloria Tristani

Attachments

cc: Krista Witanowski

ALLIANCE FOR COMMUNICATIONS DEMOCRACY (ACD)
***EXPARTE* ON COMCAST-NBCU APPLICATION**
MB DN 10-56

November 22. 2010

- As ACD and other commenters have noted, a combined Comcast-NBCU, which will merge the nation's largest cable operator with a television network/cable programming library of content far larger than Comcast currently has, will have greatly increased incentives to favor its own proprietary content over non-affiliated content.
- In almost all localities where Comcast is the cable operator, the Comcast-NBCU merger will eliminate one significant voice (the local NBC affiliate) in the *local* video viewing marketplace. The merged Comcast-NBCU will therefore have an added incentive to favor its own local outlet (the NBC affiliate) over local PEG programming that may compete for viewers of locally-oriented programming. This amplifies the need to ensure that the uniquely local and diverse outlet of PEG is protected and preserved.
- Thus, although the proposed Comcast-NBCU merger poses risks to all non-affiliated content providers on Comcast systems, it poses an especially acute, and unique, threat to PEG programming. That threat should be of particular concern to the FCC, as PEG is the one vehicle sanctioned by the Cable Act with a specific and enduring mission to encourage public participation and to foster diversity and localism.
- PEG fulfills that mission. Research shows that PEG access facilities are the leading providers of local, original programming in communities across the country. A just-released ACM survey of the 2009 programming of more than 200 PEG access centers from 37 states and the District of Columbia demonstrates that (1) the total number of hours of first-run, locally produced programs at participating PEG centers was 245,383;

(2) the average (mean) hours of such programming per PEG facility was 1,180 hours (98 hours per month); (3) sixty (60) respondents reported that they presented over 25 hours per week of first-run, local programs; and (4) thirty-one (31) respondents reported that they presented over 40 hours per week of first-run, local programs. In stark contrast, other research shows that less than 0.5% of commercial television media programming is devoted to local public affairs.

- Research further shows that viewers value PEG programming highly. A recent survey reveals that (1) 74% of subscribers say PEG programming is "very or somewhat important to them;" (2) 59% say that more than $1.00/month/sub should be devoted to PEG; (3) PEG channel locations matter, because channel surfing decreases dramatically as the channel number increases, especially above channel 100; and (4) older and lower income subscribers are less likely to access the Internet and therefore rely more heavily on cable video channel options for information.
- The merged entity could substantially reduce PEG viewership by making PEG channels more difficult for subscribers to find, access and have the same functionalities available that they have with other linear channels, and/or by compressing or degrading PEG channels so that they have reduced quality, accessibility or functionality vis-à-vis other channels. That reduction in PEG accessibility, functionality or signal quality would likely reduce PEG viewership, making it more likely that the merged entity can limit or reduce the capacity now designated for PEG use. That, in turn, would free up more system capacity for the merged entity's content as well as broadband Internet access applications.
- The Commission cannot realistically assume that existing state laws or local franchises

will adequately protect PEG from potential abuses arising from the merger. Those laws and franchises were written before the Comcast-NBCU transaction was announced, and without any consideration of its impact. Because most localities have no ability unilaterally to impose additional conditions in response to the merger, it is necessary for the Commission to protect PEG from potential abuses arising from the merger.

- Comcast-NBCU has conceded the relevance and importance of PEG issues by volunteering 2 PEG-related conditions. But those conditions are inadequate.
  - The first condition — that Comcast will not migrate PEG to digital until a cable system is converted to all digital, or until a community agrees to PEG digital carriage, whichever occurs first -- would leave Comcast free to "channel slam" PEG programming. It also ignores that local franchises and state video franchising laws permitting PEG digital conversion before local broadcast digital conversion were not adopted in contemplation of the cable operator acquiring a television broadcast network. Moreover, once Comcast converts to all-digital (as it soon will), its proposed condition would leave it free to discriminate against PEG vis-à-vis its proprietary programming, in terms of accessibility, signal quality and functionality. And, unless the Commission grants the Petition for Declaratory Ruling of ACM, *et at.* in MB Docket No. 09-13, Comcast's commitment would leave Comcast free to relegate PEG to a substandard IP application as AT&T has done with its "PEG Product."
  - Comcast-NBCU's second proposed PEG condition — that it will develop a platform to host some PEG content on VOD and On Demand Online within 3 years. which Comcast claims is "an enhancement and not a replacement for existing PEG franchise

commitments"— would be meaningful only if Comcast is required to maintain its existing commitments. In addition, Comcast must be required to carry out its PEG VOD commitment non-discriminatorily. As drafted by Comcast, the proposed PEG VOD commitment would improperly leave Comcast free to discriminate against PEG on its VOD and online platforms — something its increased program library resulting from the merger would give it an incentive to do.

- The Commission should therefore impose the following 4 PEG-related conditions on any consent to the Comcast-NBCU transaction:

PEG Merger Condition No. 1: As a condition of the Comcast-NBCU merger, Comcast should be required to make all PEG channels on all of its cable systems universally available on the basic service tier, in the same format as local broadcast channels, unless the local government specifically agrees otherwise.

PEG Merger Condition No. 2: As a merger condition, the Commission should protect PEG channel positions.

PEG Merger Condition No. 3: As a merger condition, the Commission should prohibit discrimination against PEG channels, and ensure that PEG channels will have the same features and functionality, the same signal quality, and the same accessibility as that provided to local broadcast channels.

PEG Merger Condition No. 4: As a merger condition, the Commission should require that PEG-related conditions apply to public access, and that all PEG programming is easily accessed on menus and easily and non-discriminatorily accessible on all Comcast platforms.

Alliance For Community Media

NATIONAL OFFICE
1760 Old Meadow Rd.
Suite 500
McLean, VA 22102
www.alliancecm.org

FOR IMMEDIATE RELEASE

Contact: Sylvia Strobel, Executive Director
Sylvia@alliancecm.org

PEG CHANNELS MAJOR SOURCE OF LOCAL PROGRAMMING

November, 2010 – The Alliance for Community Media ("ACM"), in partnership with The Buske Group, recently completed an online survey regarding first-run, locally produced programming on public, educational and governmental ("PEG") cable access channels. More than 200 PEG Access Centers participated in the survey, with responses from 37 states and the District of Columbia. Key findings indicate that PEG Access facilities are very often the leading provider of local, original programming in communities across the United States:

- Total number of hours of first run, locally-produced programs at participating PEG centers during 2009: 245,383
- Average (mean) per facility: 1,180 hours (98 hours per month)
- Sixty (60) respondents reported that they presented over 25 hours per week of first run, local programs during 2009.
- Thirty-one (31) respondents reported that they presented over 40 hours per week of first run, local programs during 2009.

"PEG Access channels provide an impressive array of community-based programming, including candidates' forums, government and school board meetings, youth-produced programs, job training, local parades, high school sports, local performing artists, and more. The information from this survey about the amount of locally-produced content that they generate is further evidence of the importance of PEG Access Centers," said survey coordinator Randy VanDalsen of The Buske Group.

Sylvia Strobel, Executive Director of the ACM stated that "The number of hours of original programming produced by our members highlight the critical "local" service PEG Access Centers provide to educate, inform and enhance the lives of their communities. As local sources of news and information continue to disappear, the role of, and need for, PEG Access Centers continues to increase."

In addition to the ACM, several key national partners assisted in deploying the survey, including the National Association of Telecommunications Officers and Advisors.

####

The ACM is a national, nonprofit membership organization founded in 1976 and represents the 3,000 PEG Access Centers and Community Media Centers in the United States. Its mission is to advance democratic ideals by ensuring the citizens have access to media and to promote effective communication through community media.

HOURS OF FIRST-RUN, LOCALLY-PRODUCED PEG ACCESS PROGRAMS DURING 2009

Results of an online survey conducted from October 15 – November 4, 2010

- Representatives of 208 Public, Educational and Government Access centers responded to the survey.
- Total number of hours of first run, locally-produced programs at these centers during 2009: **245,383**
- Average (mean) per facility: **1,180 hours (98 hours per month)**
- 60 respondents reported that they presented over **25 hours per week** of first run, local programs during 2009.
- 31 respondents reported that they presented over **40 hours per week** of first run, local programs during 2009.
- Responses came from PEG Access centers in 37 states and the District of Columbia: The top 15:

1. **Manhattan Neighborhood Network -- New York, NY**
   4 Public Access channels
   13,210 hours
2. **QPTV: Queens Public Television -- Flushing, NY**
   4 Public Access channels
   8,735 hours
3. **Chicago Access Network Television -- Chicago, IL**
   5 Public, Educational and Government Access channels
   7,760 hours
4. **BronxNet -- Bronx, NY**
   6 Public Access channels
   7,407 hours
5. **Quote...Unquote -- Albuquerque, NM**
   1 Public Access and 1 Arts and Events channel
   6,308 hours
6. **channelAustin -- Austin, TX**
   3 Public, Educational and Government Access channels
   5,962 hours
7. **BRIC Arts | Media | BKLYN -- Brooklyn, NY**
   4 Public Access channels
   5,603 hours
8. **Community Media Center of the North Bay -- Santa Rosa, CA**
   4 Public, Educational and Government Access channels
   5,012 hours
9. **Cambridge Community Television -- Cambridge, MA**
   3 Public Access channels
   4,943 hours
10. **Olelo Community Media -- Honolulu, HI**
    6 Public, Educational and Government Access channels
    4,550 hours
11. **Fairfax Public Access -- Fairfax, VA**
    3 Public Access channels
    4,519 hours
12. **MetroEast Community Media – Gresham, OR**
    6 Public, Educational and Government Access channels
    4,478 hours
13. **Boston Neighborhood Network – Boston, MA**
    2 Public Access channels
    4,368 hours
14. **St. Paul Neighborhood Network -- St Paul, MN**
    5 Public and Educational Access channels
    3,800 hours
15. **Portland Community Media -- Portland, OR**
    6 Public and Government Access channels
    3,615 hours

The Alliance for Communications Democracy (ACD)

~

Aggregate Data on Cable Viewership

April 2010
Attachment A - GN No. 10-25

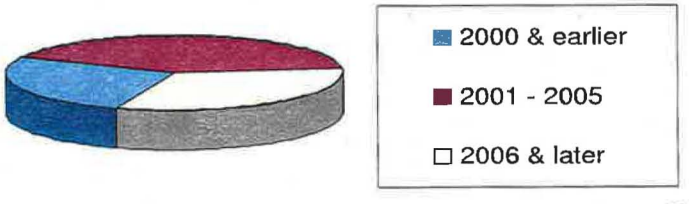
Group W
Communications, LLC
603.964.2912
www.groupwcom.com

Purpose/Methodology

ACD requested that Group W Communications compile data gathered from research conducted in PEG communities around the nation to assess to what extent people value local programming, and to compile additional findings that can help advise future media planning.

- Comparative and aggregated data based upon sampling in 53 PEG communities
- Geographic distribution:

- Communities' population ranges from 10,000 to over 2 million
- Longitudinal distribution:



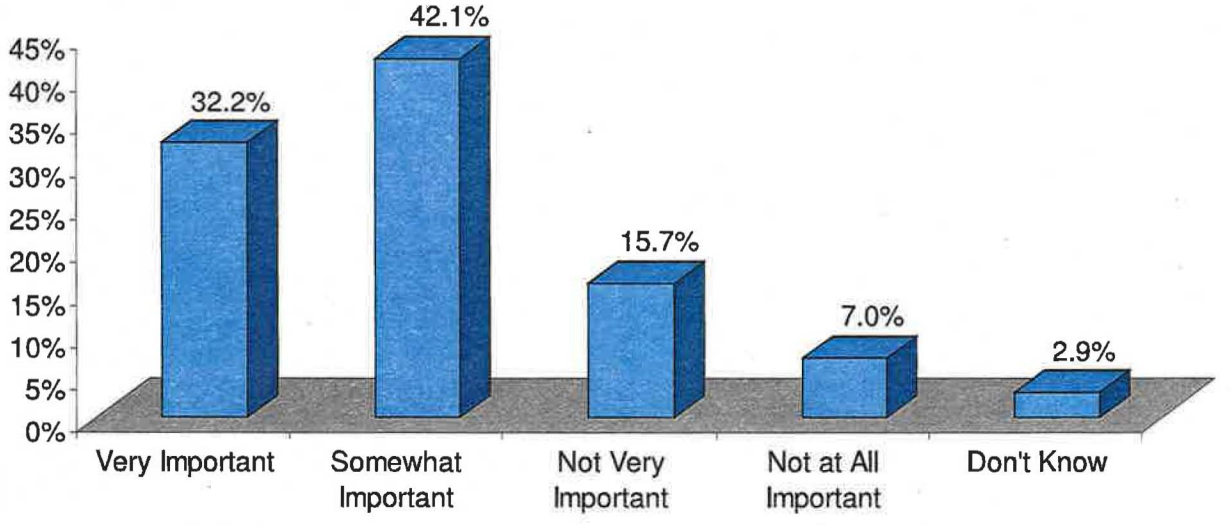
group W COMMUNICATIONS llc

Summary of Major Findings

- Cable subscribers place importance on local community programming
  - 74% say it is very or somewhat important
- Cable subscribers value local community programming
  - 59% say $1 or more each month should be used to create this programming
- Channel location matters
  - As channel numbers increase surfing & browsing decreases
- Digital divide is real and persists
  - Subscribers making less than $40,000 of annual household income are significantly less likely to access the Internet
  - Just over half as many subscribers over 65 access the Internet as those under 30

group W COMMUNICATIONS LLC

74% of cable subscribers believe that local programming is important

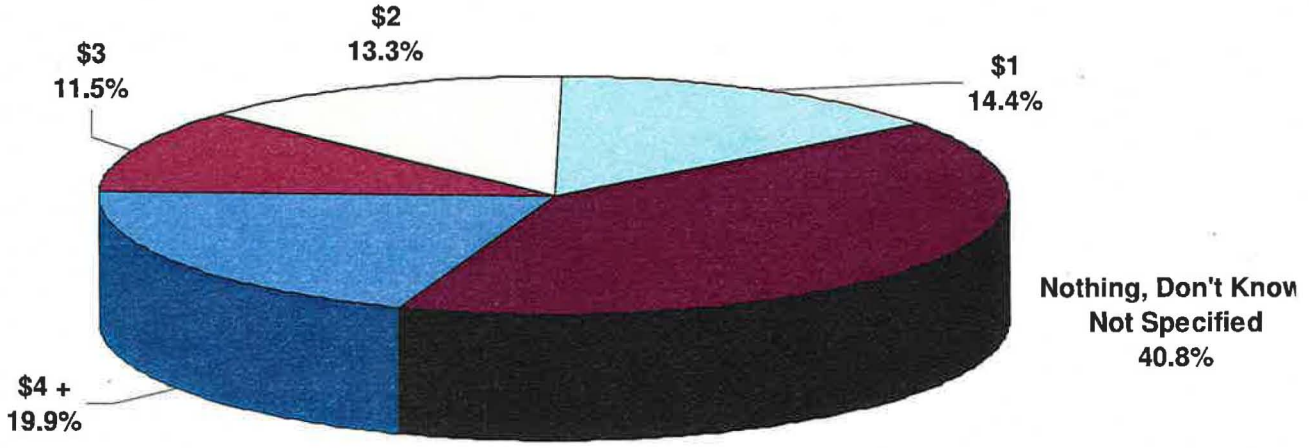


Question -- *How important is it to have cable channels that feature local community programming about organizations, individuals, events, schools, and local government? (combined "very" & "somewhat" important)*

- Aggregate data based upon sampling in 44 communities

Cable subscribers value local programming

59% of cable subscribers say $1 or more per month should be used to create local community programming

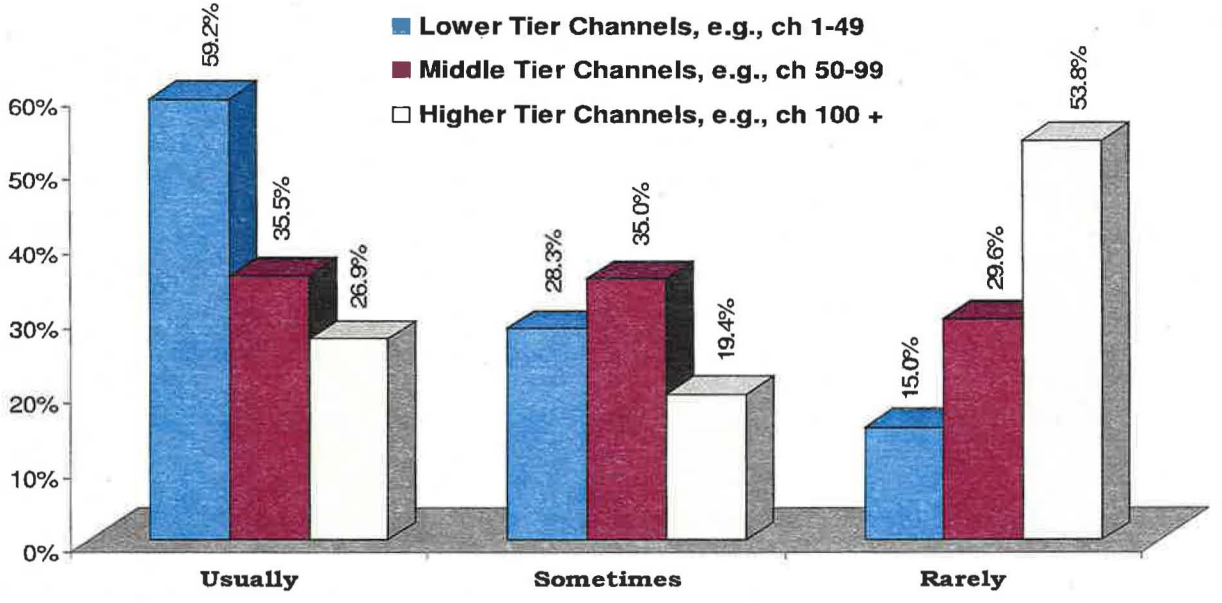


Question -- How much of your monthly cable bill do you think should be set aside and used to create local community programming about organizations, individuals, events, schools, and local government?

- Aggregate data based upon sampling in 29 communities

group W COMMUNICATIONS LLC

As channel numbers increase, surfing behavior decreases

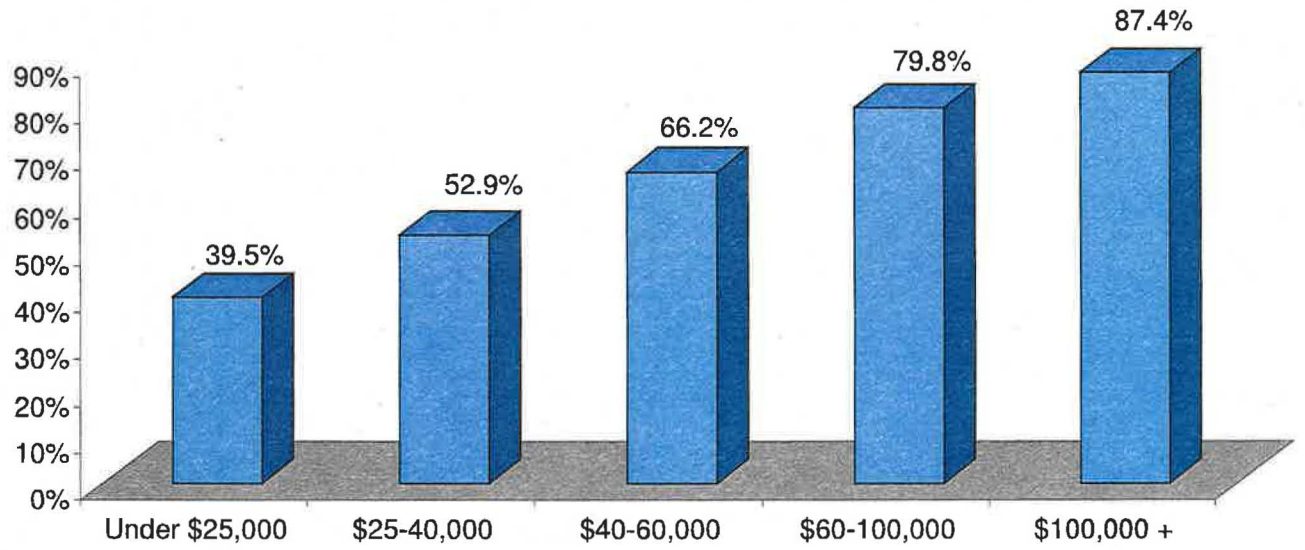


Question -- ***Cable companies now offer hundreds of channels of video programming. Please think about your viewing habits for a moment, and estimate how often you watch programs that are shown on:***

- Preliminary data based upon sampling in four communities

Digital divide is real & persists

Subscribers making less than $40,000 of annual household income are significantly less likely to access the Internet

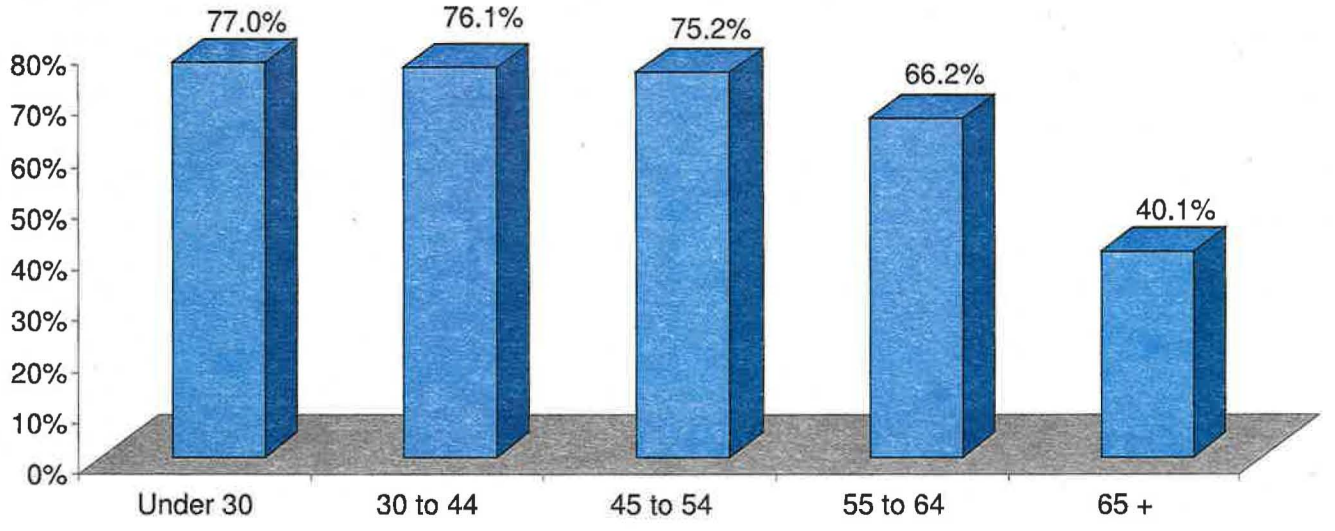


Percent of cable subscribers that access the Internet by Household income

- Aggregate data based upon sampling in 45 communities

Digital divide is real & persists

Just over half as many subscribers over 65 access the Internet as those under 30



Percent of cable subscribers that access the Internet by Age

- Aggregate data based upon sampling in 44 communities