

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

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 12-203
Competition in the Market for the)
Delivery of Video Programming)

**COMMENTS OF
American Community Television, Inc.**

American Community Television (“ACT”) submits these comments in response to the above-captioned Notice of Inquiry (“NOI”), released July 20, 2012, seeking “data, information, and comment on the state of competition in the delivery of video programming.”

American Community Television is a 501 (c)(4) nonprofit organization that educates and advocates on behalf of Public, Educational and Government (PEG) access television channels and organizations.

PEG access television channels are an increasingly important component of the nation’s media landscape. As media consolidation and the loss of local media outlets (such as newspapers), has rapidly risen, PEG access television fills a media information void by offering uniquely local information.

For that reason, PEG access television believes it provides an advantage to cable operators when it comes to competing with DBS.

The following is an explanation of the types of programming found on PEG access channels.

Types of Channels and Programming

PEG access television consists of several possible combinations of programming:

- Government access television delivers local government programming to include city/county council meetings; municipal board and commission meetings; municipal department programming (police, fire, health, emergency management, workforce development, parks and recreation, traffic safety, etc.). For many residents, Government access television is the only means by which they receive information on the workings of their government and the decisions of their elected officials.
- Educational access television provides local and national educational programming. Educational access channels are run by a number of entities to include school districts (K-12), community colleges and universities (both private and public). The programming on Educational access channels varies widely dependent on the needs and interests of the community. It includes: school board meetings; high school and college events (sports, arts, graduations); GED preparation; after school homework programming and assistance; second language courses; for credit college courses; vocational training and employment preparation. Educational access also serves as learning laboratories for high school and college students and provides hands-on training in the field of electronic media. Many Educational access operations train students in vocational skills such as camera operation, editing, audio and video creation. There are plenty of examples of students leaving high school certified in programs such as Final Cut Pro, a certification that would normally cost \$2,000 to \$3,000 to

acquire. And there are examples of high school graduates ready to take jobs in the exploding video media industry.¹ With video becoming more and more pervasive in business operations, many Educational access operations serve as critical participants in workforce development.

- Public access television serves not only as the public voice of the community, but also as an important outlet for nonprofit, religious and community service organizations in their communications efforts. Most nonprofits, religious and community service organizations simply do not have adequate funds for marketing their unique viewpoints. Their biggest challenge is making the community aware of the services they provide. The Urban Institute reports *“In 2010, nonprofits contributed products and services that added \$779 billion to the nation’s gross domestic product; 5.4 percent of GDP. Nonprofits are also a major employer, accounting for 9 percent of the economy’s wages, and over 10 percent of jobs in 2009.”* This important sector relieves the government of providing almost one trillion dollars in human services per year and provides the necessary infrastructure the local, state and government entities could never develop. On Public access television, nonprofits can communicate for little to no money and many Public access operations offer free Public Service Announcement video creations that nonprofits can use across the cable platform. Nonprofit programming makes up seventy-nine percent (79%) of all programming on Public access television.² In addition, individual residents are trained to create and

¹ FreePressRelease.com reports that a Forbes Magazine survey found that 75% of senior business executives watched work related videos with frequency once or more per week.

² See Attachment A: Front Range Consulting, Inc. and Riedel Communications, Inc. [PEG Access Benchmarking Report, 2010.](#)

develop videos on any topic, and they do. At any time on any Public access channel, cable subscribers will find: senior shows; shows by and about people with disabilities; second language programming (Hmong, Portuguese, Greek, Albanian, Farsi, German, Russian, French, Mandarin, Tagalog, to name a few); shows by and about children; religious programming; local musicians and artists; business and financial advice programming; home improvement shows; cooking shows; candidate forums; travel shows; nature programming; ethnic programming; local talk shows; and many more types of topics of interest to the local community. In the same way Educational access provides hands-on training, Public access provides hands-on training to producers from every walk of life and financial situation. There are endless anecdotal examples of access producers gaining the skills to make a career change or keep current in their current job skills.

There is no “one size fits all” approach to PEG operations or programming. In many communities, a Public access channel may serve the roles of all three types of access programming. Depending on the community Public, Educational and Government access channels are managed as separate entities, with separate facilities and equipment, or there are combinations of management (Public/Government; Public/Educational; Government/Educational; or Public/Educational/Government).³

³ See Attachment B: Media at the Margins: Policy and Practice in American, Canadian, and British Community Television. Christopher Ali, University of Pennsylvania. *International Journal of Communication* 6 (2012), 1119–1138.

In comparison to local broadcast stations that produce approximately 1,500 hours of programming per year, Government access produces 1,250 hours per year, Educational access produces 1,500 hours per year and Public access produces 2,000 hours per year.⁴

Quantifying the Number of PEG Access Channels

There is no one source for quantifying the number of PEG access channels in existence in the United States. Estimates are there may be as many as 5,000 channels. We know of two data sources for identifying these PEG access operations, one is on the Community Media Database and is publically available, another is maintained privately.⁵ It is estimated that there may be as many as 2,200 to 2,500 access operations, however, actually determining the number of channels is difficult given some operations have three or more channels while others may only have one or two channels. This inability to quantify the PEG channel universe results because of the nature of historic cable franchising that allowed each individual community to negotiate the number of channels based on community needs. There is no standard number of channels that are negotiated.

Tiers Where PEG Channels Are Carried

In states that still have local municipal franchising, PEG channels are most often found on the Basic Tier of service. However, in many states with statewide or state issued franchising laws, PEG channels have been slammed to high digital tiers that require extra equipment to access them. In Florida, Brighthouse Networks puts PEG channels in the 600's. In Missouri, Charter puts PEG channels in the 900's and in order

⁴ See Attachment A: Front Range Consulting, Inc. and Riedel Communications, Inc. PEG Access Benchmarking Report, 2010.

⁵ See <http://tinyurl.com/8qgykp> .

to access them, cable subscribers must rent additional equipment. This movement of the PEG channels in Missouri was highly unpopular among the subscribers.⁶

There is a constant tension between local communities and the cable operators when it comes to PEG access television channel placement. One concern about taking PEG channels off of the Basic Tier or placing them in a position that requires renting extra equipment, is that it affects communities that are most vulnerable, that being the poor and the elderly. As Charter explained in a 2009 notice to subscribers:

*Your options include a TV that uses CableCard technology**; a TV that has a digital tuner; or you may obtain a digital receiver from Charter.*

In that notice, Charter notes that additional digital service charges will apply, as well as charges for the extra needed equipment.⁷

These communities, the poor and the elderly, are often the greatest beneficiaries of PEG access programming, whether it's being able access educational opportunities, learn what nonprofit or government services may be available to them or receiving religious services when they are shut-in.

The Number of PEG Access Channels Since June 2010

The passage of statewide or state-issued cable franchising laws began in 2005 and, with the exception of Idaho which passed this year, largely stopped in 2008. In three states, Nevada, Kansas and South Carolina, all funding for PEG access was eliminated on the effective date of the legislation. Wisconsin PEG funding was eliminated on May 1,

⁶ See St. Louis Post Dispatch, February 21, 2010 <http://tinyurl.com/9ldc6p3>

⁷ See Attachment C: Charter Notice to Subscribers.

2011. On January 1, 2012, funding for PEG was eliminated in Ohio, Missouri, Iowa, and Florida. On July 1, 2012, funding for PEG was eliminated in Georgia and Idaho.⁸

In 2010, Public access in Reno, Nevada was eliminated. In 2011, Public access in St. Louis, Missouri was eliminated. ACT has recently received word that Public access in Atlanta will close its doors on December 31, 2012 and that Public access in West Allis, Wisconsin has stopped operations. Cable run access operations in Indiana have been shut down.

In the ten states that eliminated funding, sometimes through directive language or omission, there are as many as five hundred PEG channels. Because this year so many states have lost their PEG funding, ACT does not know which access operations will or will not survive.

While California retained PEG funding, at various levels, the loss of access operations and channels has happened because of a lack of provisions in California's state issued franchising law. Cable operators that had previously managed access operations and facilities, no longer had to provide that service. It is estimated that as many as fifty (50), mostly Public access channels, have ceased operation.

Conclusion

PEG access programming is uniquely local and uniquely diverse, reflecting the community it serves. The loss of PEG programming seriously undercuts a community's need to have this important type of local programming. When the community needs are part of the franchising process as partial compensation for the use of the rights of way, communities are significantly benefited. ACT believes that having PEG programming

⁸ See Attachment D: Public, Educational, and Governmental (PEG) Access Cable Television Channels: Issues for Congress. Charles B. Goldfarb. Congressional Research Service.

maintained on the basic service tier, fully funded by the subscribers and part of the cable operator's service offering are a competitive advantage over DBS providers and must be retained as part of the franchising process.

Respectfully Submitted,

A handwritten signature in black ink that reads "Bonnie Riedel". The signature is written in a cursive style with a large initial 'B'.

Bonnie Riedel, Executive Director
American Community Television
8775 Centre Park Drive, #255
Columbia, MD 21045
410-992-4976
riedel@acomunitytv.org

September 10, 2012

Attachment A



Front Range Consulting, Inc.

&

Riedel Communications, Inc.

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Introduction

Front Range Consulting, Inc., and Riedel Communications, Inc., conducted a Public, Educational and Government (PEG) access television benchmarking study in 2010. The purpose of the study was to provide information to those who participated on: (1) current practices of the access centers; (2) access centers management models; and (3) types of programming and service of the access centers to the community.

Using online survey software, the participants were asked questions regarding: (1) cable operators; (2) channel placement; (3) types of channels; (4) technical facilities and equipment; (5) budgets; (6) staff; (7) programming; (8) training; and (9) organizations and individuals served. Twenty-five (25) entities representing seventy-three (73) PEG access television channels participated in the survey.

Among the findings of the survey were:

- There is a wide budget variance per subscriber.
- Almost thirty-nine percent (39%) of PEG entities own or lease their own facility.
- Almost fifty-eight percent (58%) say they do not have enough space to accommodate their users even though almost half of the respondents say they are open to the public.
- For the majority of access facilities that are open to the public, almost sixty-seven percent (67%) are open from noon until 10 p.m.
- Executive director or general manager salaries ranged from seventy percent (70%) to one hundred and thirty percent (130%) of the cost of living normalized average salary.
- Almost twenty-nine percent say they are not satisfied with the technical capabilities of the “plant.” When asked to explain, most cited channel transmission problems not related to AT&T’s U-verse but to technical problems with audio or tiling, etc.
- Forty-eight percent (48%) report that there is an I-Net and sixty-four percent (64%) of those have remote capability from origination points on the I-Net.

Public Access Television

- For Public access, religious programming counts as the highest single amount of programming at over twenty-two percent (22%) however educational, special interest and community awareness programming constitute over fifty two percent (52%) of all programming.
- Access organizations produce over two thousand (2,000) of original programming per year compared with approximately fifteen hundred (1,500) hours of original programming produced by a local commercial broadcast station each year.

- For Public access, nonprofits are the biggest users of the channels at seventy-nine percent (79%).
- The majority of Public access budgets have remained the same for the last two years, neither going up or down.

Educational Access Television

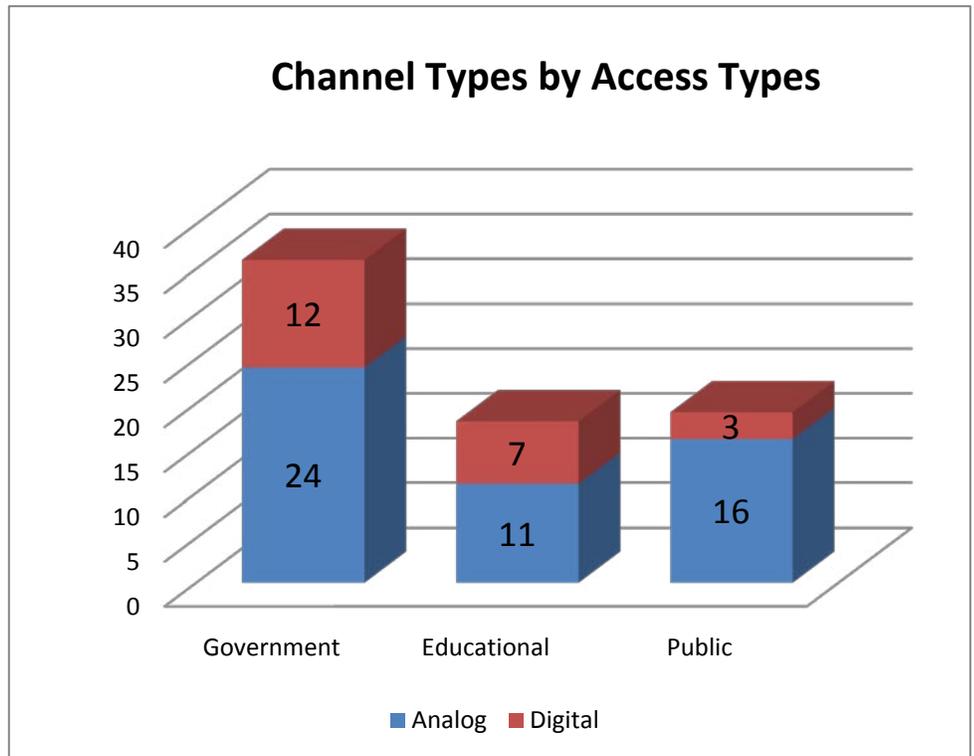
- While as expected, thirty eight percent (38%) of Educational access programming is educational, it is interesting to note that twenty-four percent (24%) is governmental programming.
- Educational access entities produce just over fifteen hundred (1,500) hours of original programming each year, approximately equivalent of their local commercial broadcast station.
- Thirty-four percent (34%) of Educational access programming is nonprofit and government programming.
- Over fifty-seven percent (57%) of Educational access entities report their budgets have either remained the same or gone down in the last two years.

Government Access Television

- Sixty percent (60%) of programming on Government access stations is not government programming, but instead educational, community awareness , special interest, political and other, and religious and lifestyle programming.
- Government access entities produce approximately twelve hundred and fifty (1,250) hours of original programming each year compared to their local commercial broadcast counterpart that produce fifteen hundred (1,500) hours of original programming.
- Thirty-five percent (35%) of Government access users are nonprofits or “others.”
- Forty percent (40%) of Government access entities report that their budgets have gone down in the last two years.

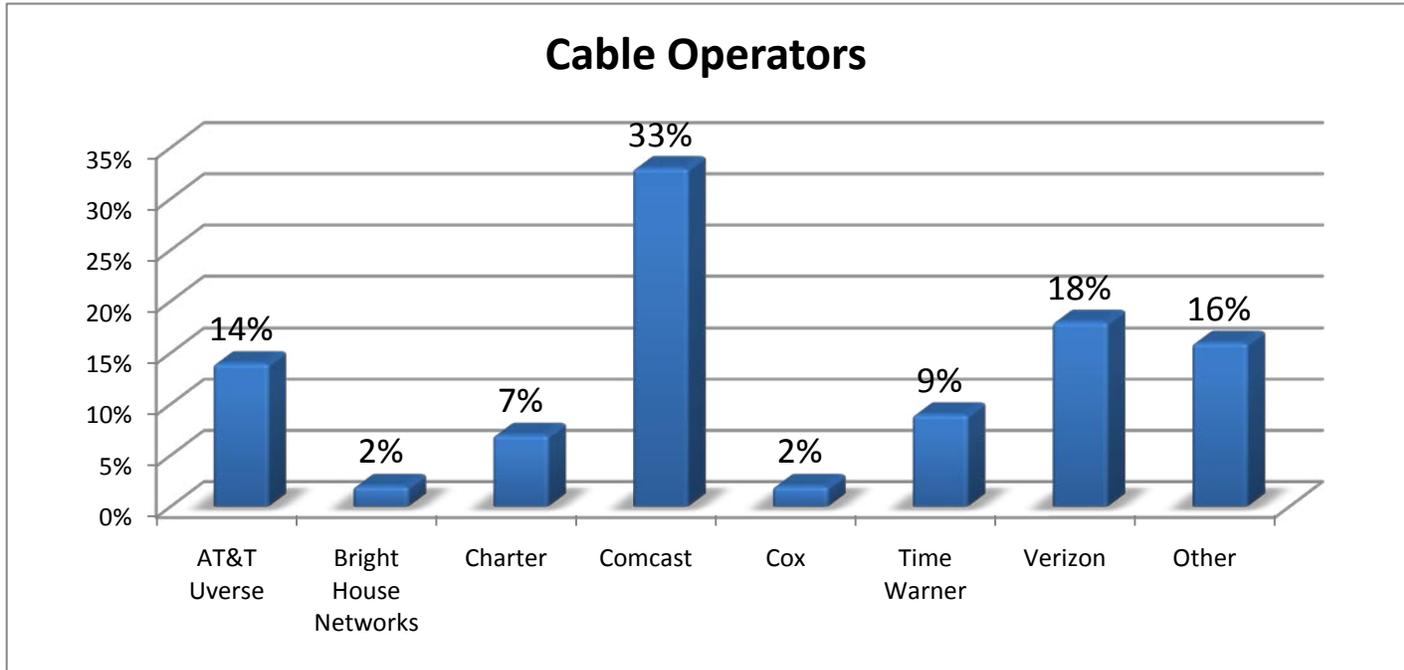
Operational Overview

Of the seventy-three (73) channels, fifty-one (51) were PEG access television analog channels and twenty-two (22) were PEG access digital channels. It is important to note that some of the digital channels were the result of the cable operators moving the channels to digital.



A greater percentage of Educational access channels have been moved to the digital tier than Public or Government access channels. Thirty-eight percent (38%) of all Educational access channels in the study were on the digital tier versus roughly sixteen percent (16%) of Public access and thirty percent (30%) of Government access television. However, there are more Government channels on the digital tier than either Public or Educational channels.

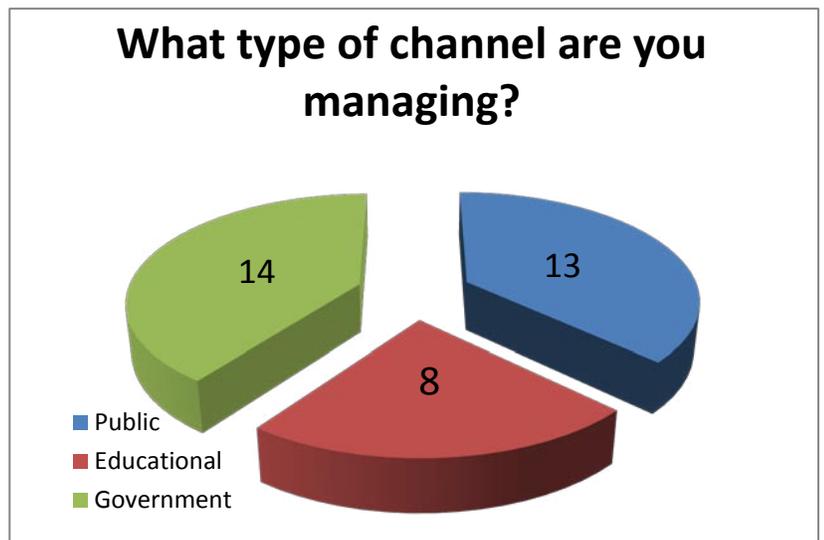
The survey respondents provided the following answers in regard to who their cable operator (s) is:¹



Comcast was the primary provider among these survey participants, however, among all participants, AT&T had over fourteen percent (14%) coverage and Verizon had over seventeen percent (17%) coverage.

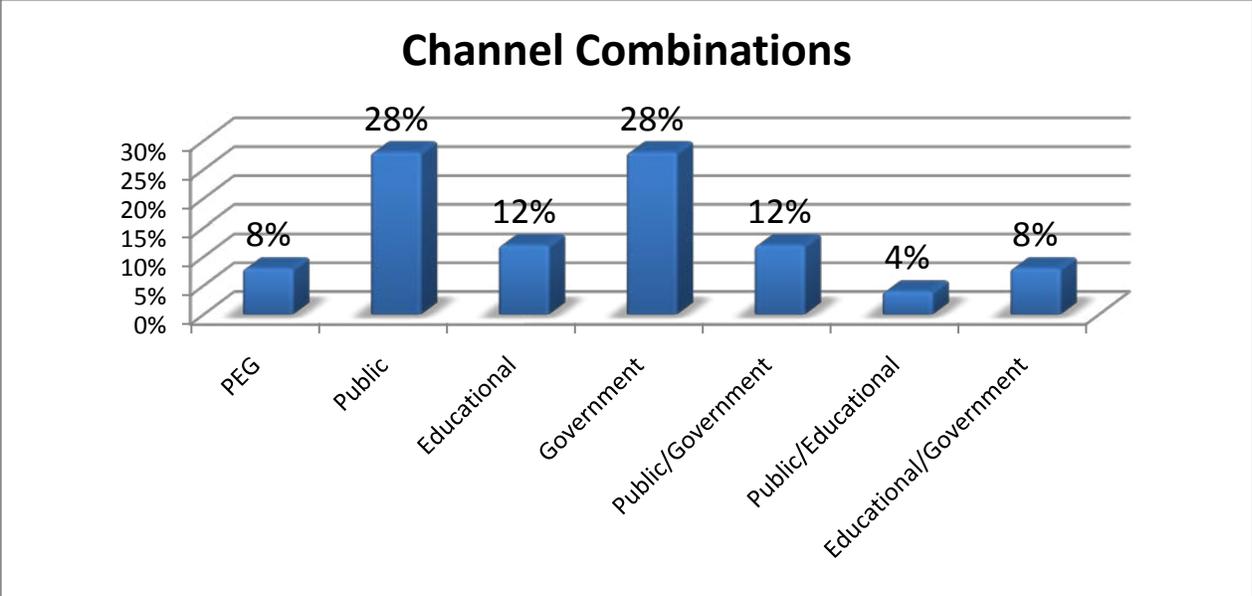
Respondents were asked what type of PEG access operation they were managing and to check all that applied.

Thirty-two percent (32%) of the respondents manage a combination of two or three types of PEG access channels, while sixty-eight percent (68%) manage only one type of PEG access channel.



¹ For other: Wide Open West, 1.75%; RCN (ABRY) 12.29%; Click! Network, 1.75%.

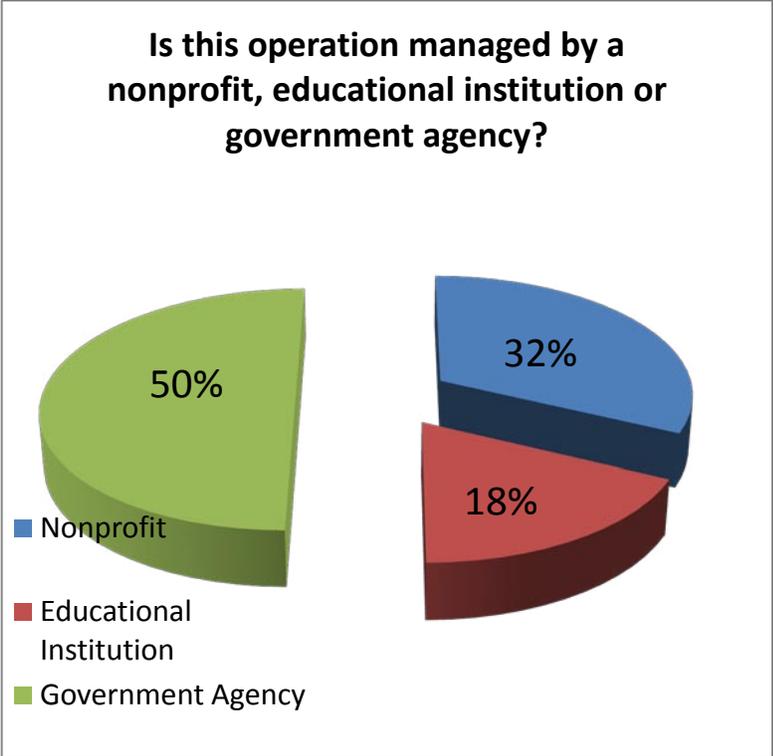
The types of channels that respondents manage and the combinations of various types of channels managed by the same organization are as follows.



Next the respondents were asked what kind of entity managed the operation and the channels.

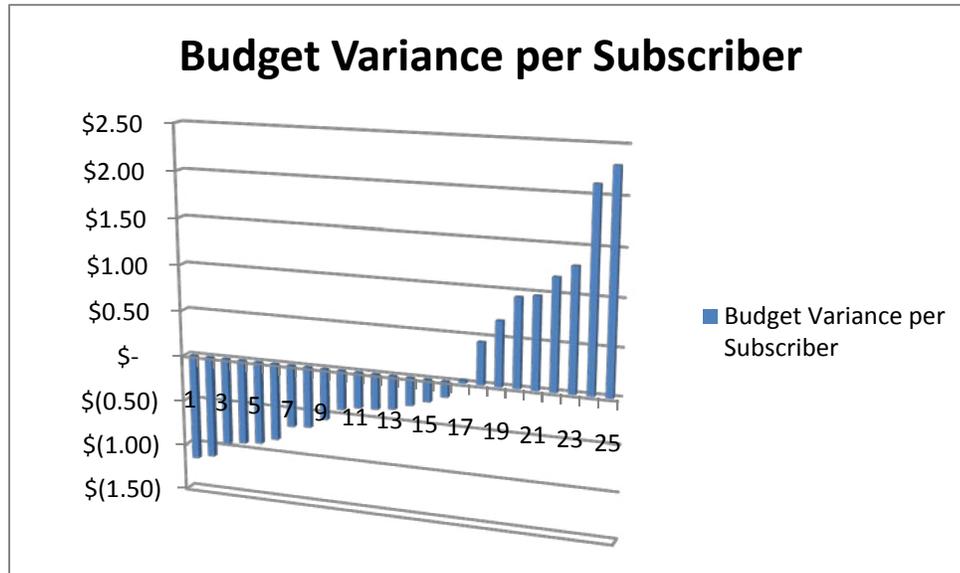
Fifty percent (50%) of PEG channels are managed by a government agency while fifty-six percent (56%) of the channels are Government access. Six percent (6%) of the Government channels are being managed by a nonprofit entity.

Just over thirty-two percent (32%) of the PEG channels are managed by a nonprofit entity, while fifty-two percent (52%) of the channels are Public access. Four percent (4%) of the Public access channels are being managed by an educational institution while sixteen percent (16%) are being managed by a government agency.



Over seventeen percent (17%) of the PEG channels are managed by an educational institution, while twenty-four percent (24%) of the Educational access channels were being managed by a nonprofit entity and eight percent (8%) were being managed by a government agency.

The number of subscribers served by these access operations ranged from 9,500 to 275,000, for over 1.8 million total subscribers. The budget for all the access operations combined was over \$23 million, with the smallest being \$88,000 and the largest being \$4 million.

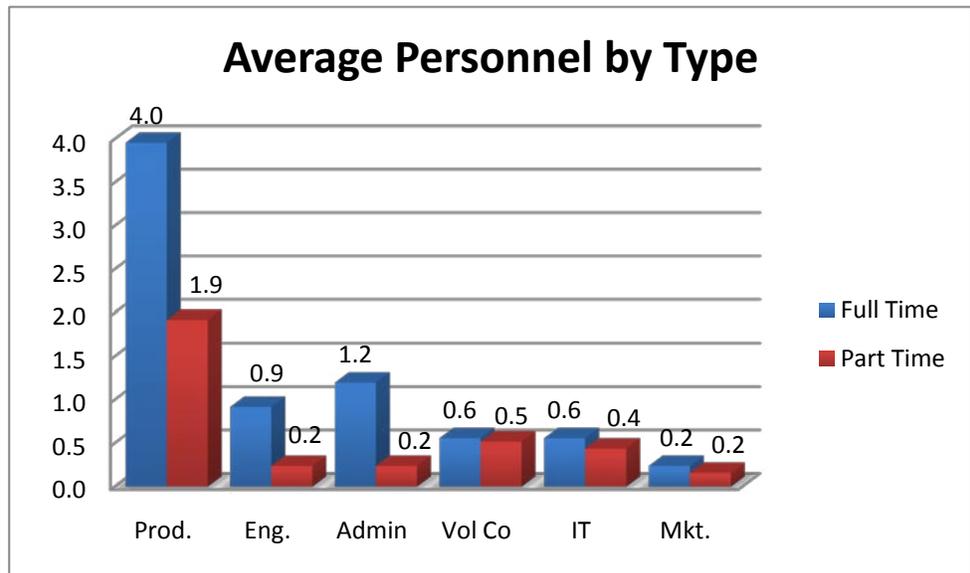


Personnel

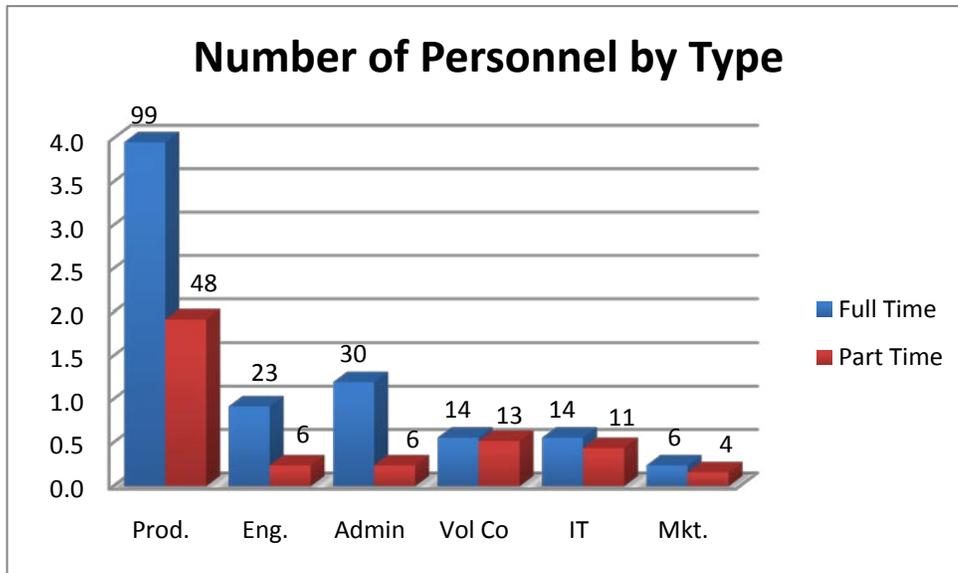
Respondents were asked to provide the salary of the Executive Director or General Manager. Those salaries were then averaged and compared with the cost of living in each respondent's city compared to other respondents' cities. There was a sixty percent (60%) differential between the lowest cost of living and the highest cost of living.



The total number of staff, excluding the respondent, was two hundred and forty-six (246) or almost ten (10) staff members per access operation. When asked to identify those positions the respondents gave the following numbers for each type of position listed.



The following chart represents the real numbers and types of staff positions that were provided by the respondents.

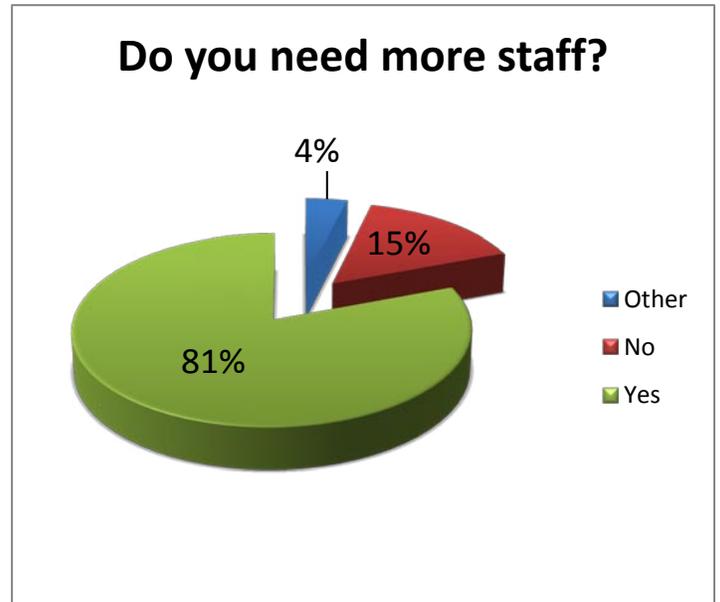


In addition to these staff types, respondents were able to fill in staff types based on the positions in their operation. These included volunteers, contract employees and production assistants for production; master control operators; truck technicians; and administrative support.

The majority of the staffing is for production personnel. It is somewhat surprising that very few staff positions were for marketing and outreach given these are important positions for “branding” the channels.

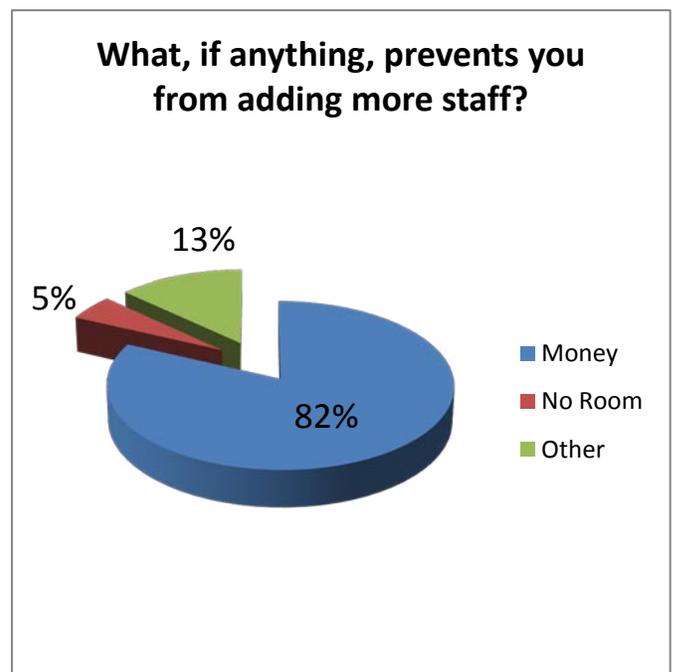
The benefits packages for the staff were robust. Every operation provided health care and vacation leave. And a majority provided all other types of benefits such as dental insurance, life insurance, retirement plans, sick and family leave and additional personal days. The benefits provided make these access operations competitive with the commercial marketplace.

Respondents were then asked if they needed more staff. Over eighty percent (80%) answered that they did need more staff and nineteen percent (19%) answered either that they did not need more staff or “other.” We can assume from the numbers and types of staff that were reported earlier that a majority of these positions would be productions positions.



Almost eighty-two percent (82%) of the respondents who indicated that they need more staff answered that the thing that prevents them from adding staff is money.

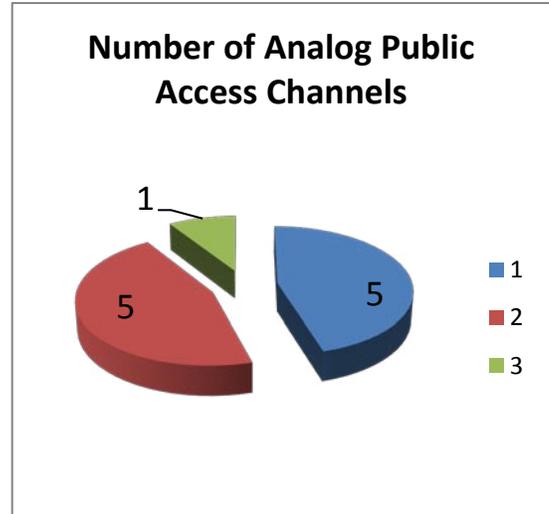
Almost five percent (5%) replied that there was not enough room in the facility to accommodate staff, while over thirteen percent (13%) chose other and provided the following types of responses; budget cuts, policy decisions and conducting a needs assessment first.



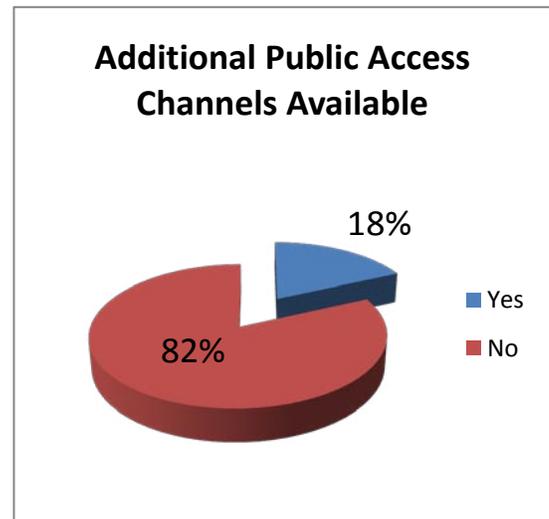
Public Access Results

Of the twenty-five (25) respondents to the survey, thirteen (13) of them operate a Public access operation. Of those thirteen (13) respondent, eleven (11) completed the survey with respect to their Public access operations.

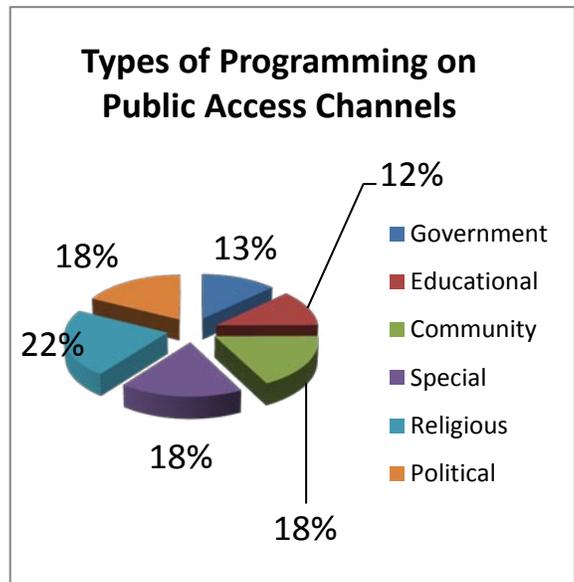
Of the eleven respondents five (5) responded that they had only one (1) Public access channel, five (5) responded that they had two (2)Public access channels and one responded that they had three (3) Public access channels. All of the respondents replied that these analog Public access channels were part of the Basic tier of service on the cable operators channel line-up.



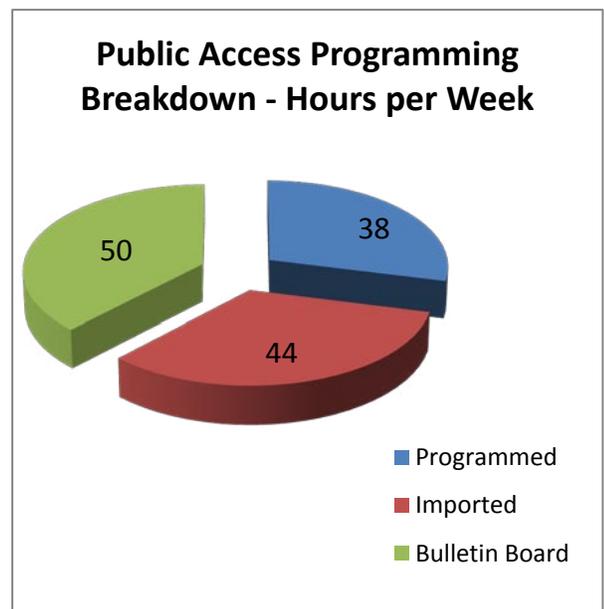
Three of the respondents replied that they had digital Public access channels in addition to their analog Public access channels. In each case, these respondents only had one (1) digital Public access channel. None of the respondents had High Definition capabilities on their Public access channels. Of the respondents, three of the respondents were on the AT&T U-verse system. Interestingly enough, almost twenty percent of the respondents replied that they had additional Public access channels available under the franchise agreements which were not activated at this time.



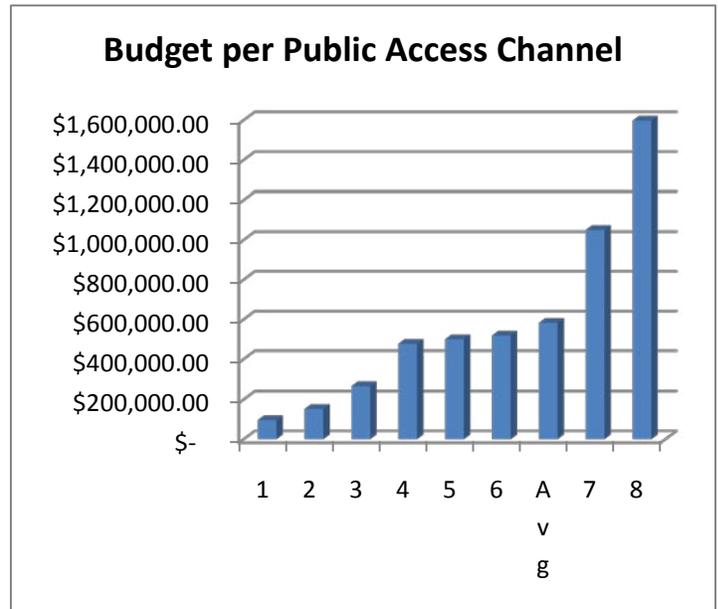
Each respondent was given a list of thirty-eight (38) different types of programming to select from. Each respondent was asked to select all programming types that applied to their Public access operations. The thirty-eight (38) types were assigned to one of six (6) major programming groups: (1) Government Services and Meetings; (2) Educational; (3) Community Awareness; (4) Special Interests; (5) Religious and Lifestyle; and (6) Political and Other. Attachment A contains the listing of the programming types. The highest percentage programming group was the religious and lifestyle programming at twenty-two percent (22%). What was also interesting was that while these were classified as Public access channels, the channels also carried almost twenty-five percent (25%) government and educational programming, suggesting that the title of the channel, Public access, does not necessarily reflect the actual types of programming on the channel.



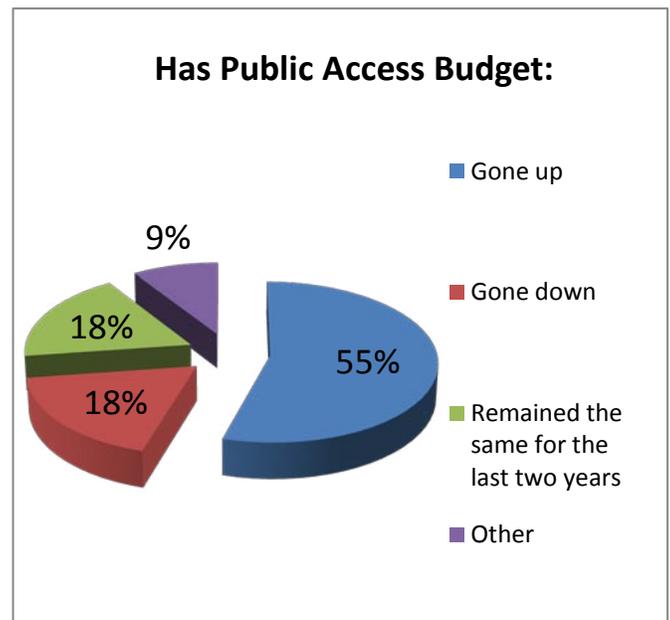
In addition to the types of programming carried by the public access channels, the respondents were asked to identify the number of hours of programming: (1) Programmed Locally; (2) Imported from Other Outlets; and (3) Bulletin Board or Character Generated Programming. An Average for the respondents, over eighty (80) hours of programming were programmed locally (thirty-eight (38) hours) or imported from other outlets (forty-four (44) hours) per week. Considering only the locally produced programming of thirty-eight (38) hours per week, this suggests that these Public access channels on average produce almost two-thousand (2,000) hours of original local programming per year. An interesting comparison is the number of hours of locally produced news programming by a local broadcaster. Assuming a morning, afternoon, evening and late night news programming during the week and just morning, evening and late night on the weekends, the local broadcaster would only be producing less than thirty (30) hours per week compared to the thirty-eight (38) hours produced by the Public access channels.



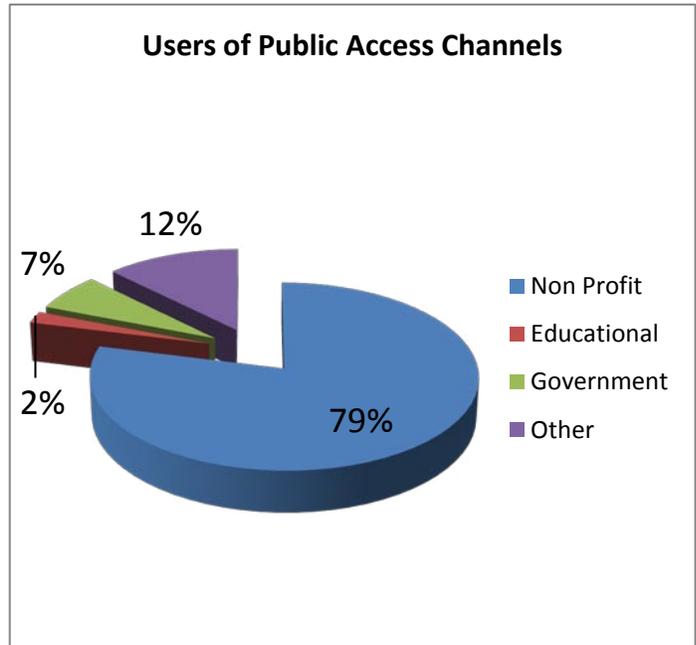
Funding of the Public access channels varies widely depending on the number of channels and the sources of funding, *i.e.*, franchise commitments, franchise fee or separate public access funding. The range of the respondent's answers on a per channel basis ranged from a low of \$95,000 to a high of \$1,600,000 with an average of just over \$580,000. Most of the respondents had a per channel funding of around \$500,000 per channel.



The respondents were asked to identify what has generally happened to their funding over the past two years. Fifty-five percent (55%) of the respondents said their Public access funding has gone up over the past two years with thirty-six percent (36%) saying that it has remained the same or gone down. One logical explaining for those with increasing funding may be that the Public access funding is tied directly to increases in cable revenues or specific dollars contained in a franchise agreement with set escalators.



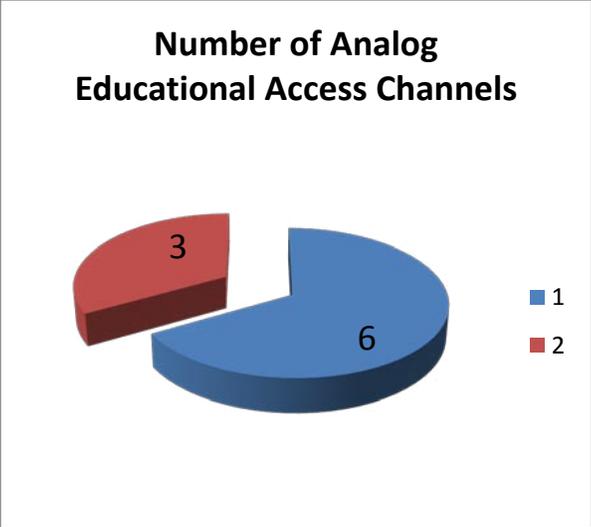
Finally the respondents were asked who uses the Public access channels. They were give four categories: (1) Non Profit Entities; (2) Educational Entities; (3) Governmental Entities and (4) Other. The respondents entered the number of each of these entities using the public access channels. Seventy-nine percent (79%) of the entities using the Public access channels were Non Profit entities.



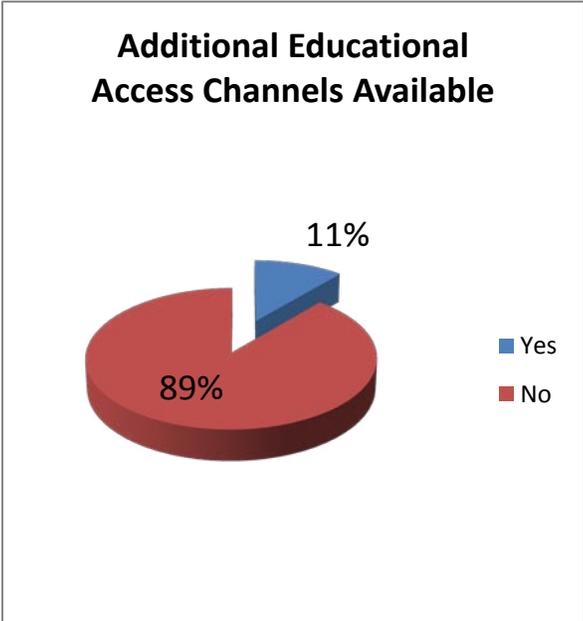
Educational Access Results

Of the twenty-five (25) respondents to the survey, nine (9) of them operate an Educational access operation.

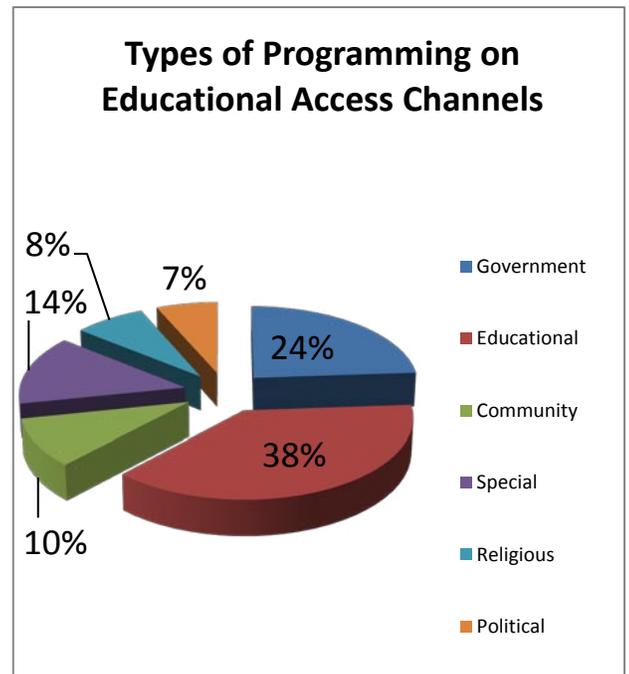
Of the nine respondents six (6) responded that they had only one (1) Educational access channel and three (3) responded that they had two (2) Educational access channels. All of the respondents replied that these analog Educational access channels were part of the Basic tier of service on the cable operators channel line-up.



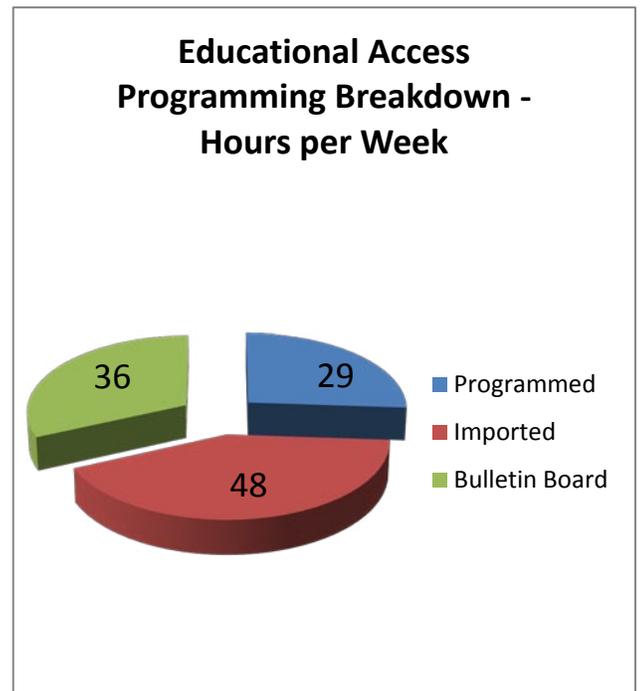
Four (4) of the respondents replied that they had digital Educational access channels in addition to their analog Educational access channels. Three (3) respondents had two (2) digital Educational access channels with one (1) having only one (1) digital Educational access channel. None of the respondents had High Definition capabilities on their Educational access channels. Of the respondents, two (2) of the respondents were on the AT&T U-verse system. Interestingly enough, only one (1) of the respondents replied that they had additional Educational access channels available under the franchise agreements which were un-activated at this time.



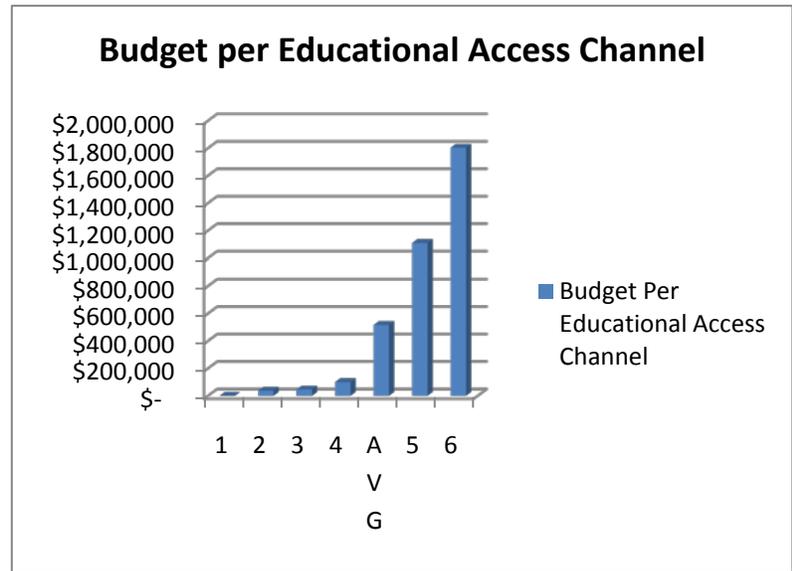
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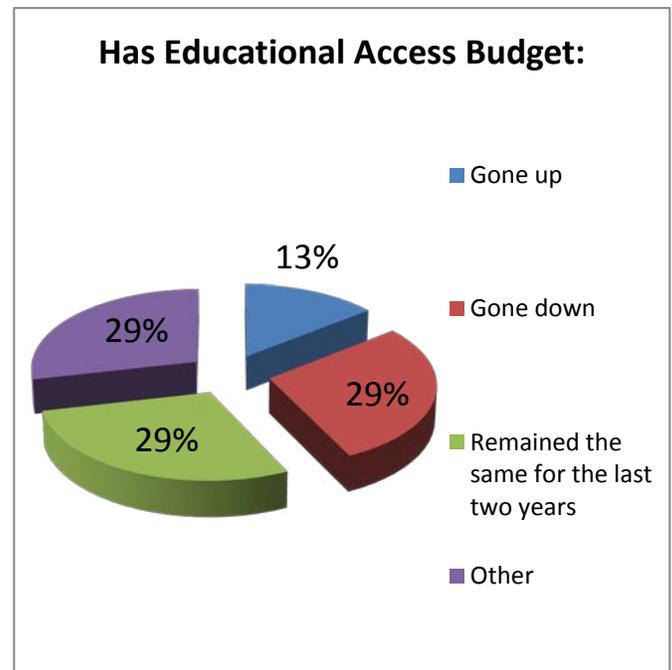
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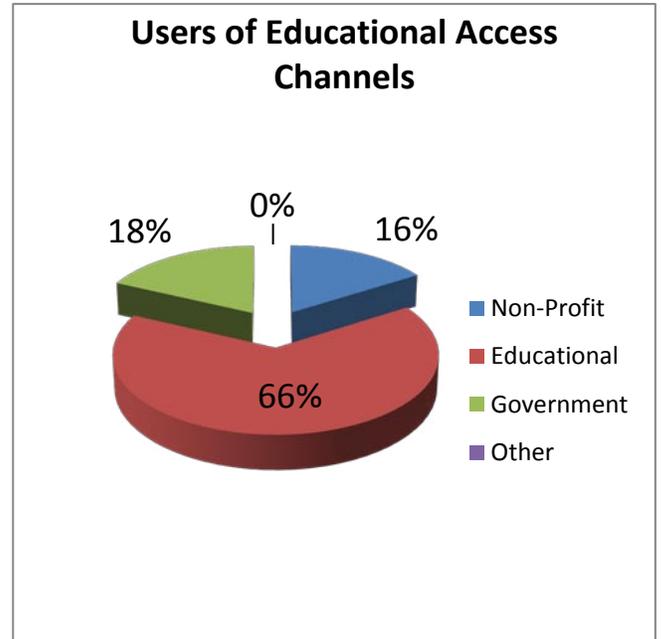
Funding of the Educational access channels varies widely depending on the number of channels and the sources of funding, *i.e.*, franchise commitments, franchise fee or separate educational access funding. The range of the respondent's answers on a per channel basis ranged from a low of \$0 to a high of \$1,800,000 with an average of just over \$515,000. Most of the respondents had a per channel funding of \$100,000 or less per channel.



The respondents were asked to identify what has generally happened to their funding over the past two years. Only seven (7) replied. Six out of the seven were equally split between other, gone down and remained the same with only one respondent replying that the funding had gone up.



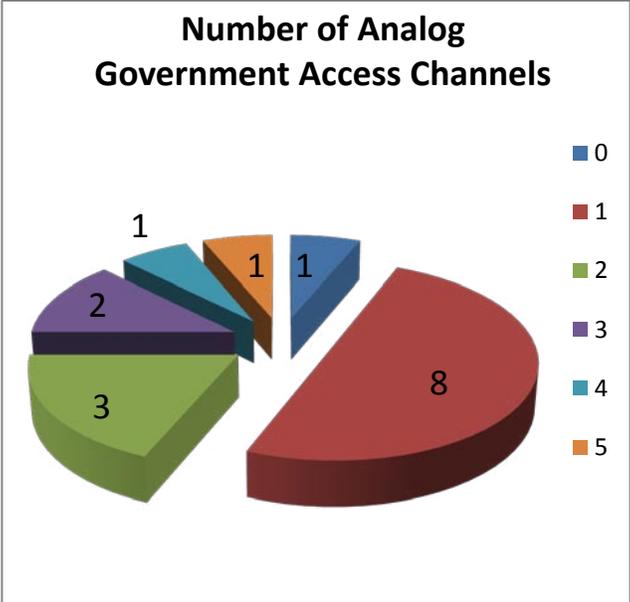
Finally the respondents were asked who uses the Educational access channels. They were give four categories: (1) Non Profit Entities; (2) Educational Entities; (3) Governmental Entities and (4) Other. The respondents entered the number of each of these entities using the educational access channels. Sixty-six percent (66%) of the entities using the Educational access channels were Educational entities with the remaining thirty-three percent (33%) were Governmental and Non Profit entities.



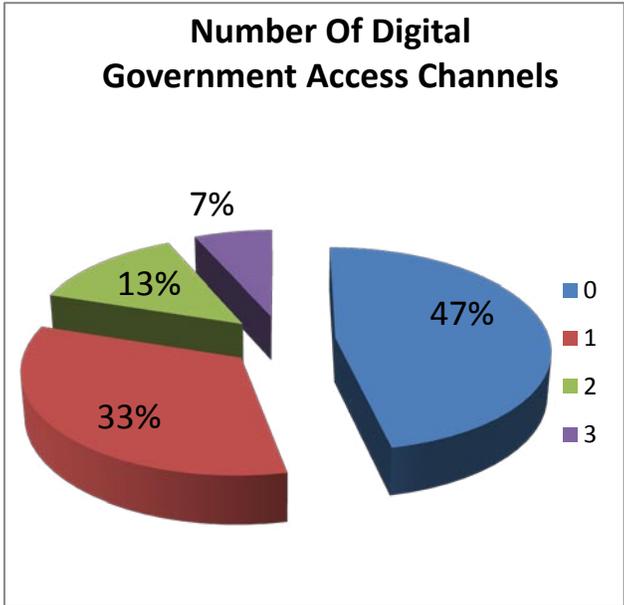
Government Access Results

Of the twenty-five (25) respondents to the survey, sixteen (16) of them operate a Government access operation.

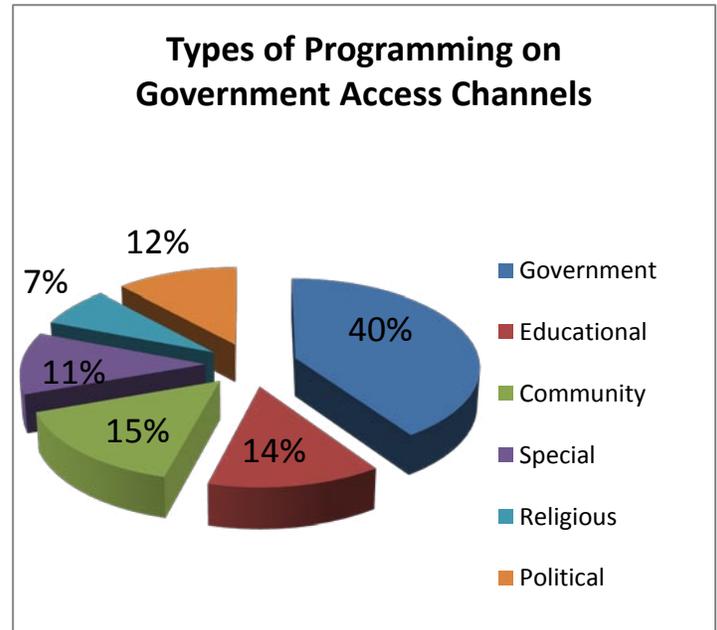
Of the sixteen respondents eight (8) responded that they had only one (1) Government access channel, three (3) responded that they had two (2) Government access channels and four (4) had three (3) or more Government access channels. One (1) respondent did not have any analog Government access channels as their channel was moved to digital. All of the respondents, except for the digital only Government access channel respondent, replied that these analog Government access channels were part of the Basic tier of service on the cable operators channel line-up.



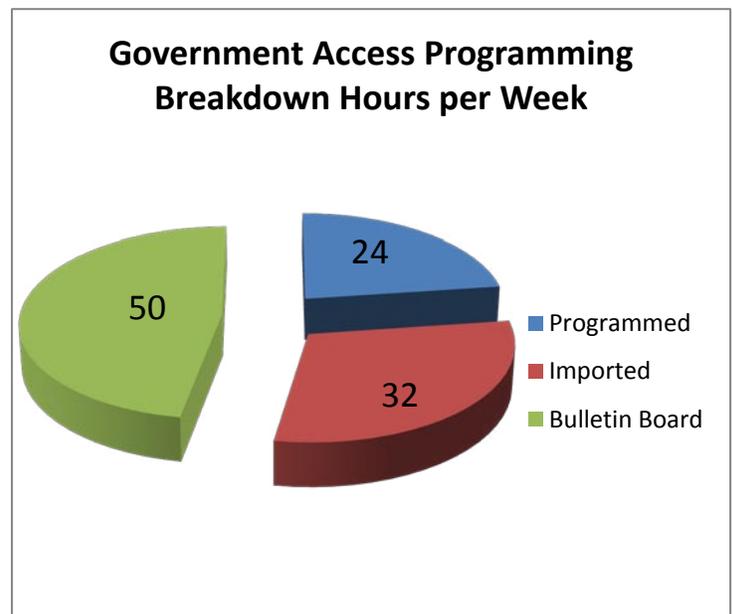
Eight (8) of the respondents replied that they also had digital Government access channels. Five (5) respondents had one (1) digital Government access channels, two (2) had two (2) digital Government access channels with one (1) having three (3) digital Government access channel. One respondent had High Definition capabilities on their Government access channels. Of the respondents, five (5) of the respondents were on the AT&T U-verse system. Interestingly enough, three (3) of the respondents replied that they had additional Government access channels available under the franchise agreements which were not activated at this time.



Each respondent was given a list of thirty-eight (38) different types of programming to select from. Each respondent was asked to select all programming types that applied to their Government access operations. The thirty-eight (38) types were assigned to one of six (6) major programming groups: (1) Government Services and Meetings; (2) Educational; (3) Community Awareness; (4) Special Interests; (5) Religious and Lifestyle; and (6) Political and Other. Attachment A contains the listing of the programming types. The highest percentage programming group was the government programming at forty percent (40%). What was also interesting was that while these were classified as Government access channels, the channels also carried almost thirty percent (30%) educational and community programming suggesting that the title of the channel, Government access, does not necessarily reflect the actual types of programming on the channel.

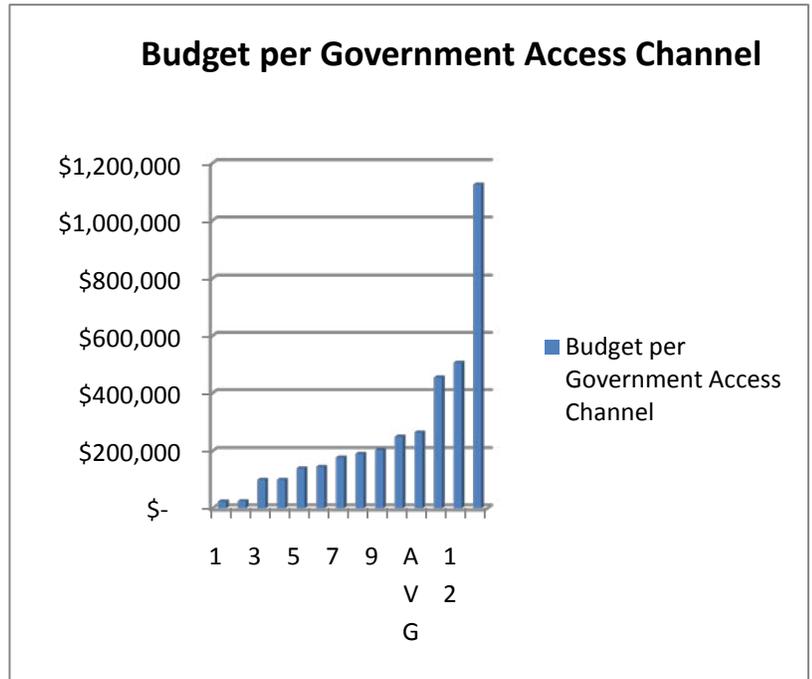


In addition to the types of programming carried by the Government access channels, the respondents were asked to identify the number of hours of programming: (1) Programmed Locally; (2) Imported from Other Outlets; and (3) Bulletin Board or Character Generated Programming. An Average for the respondents, over fifty-five (55) hours of programming were programmed locally (twenty-four (24) hours) or imported from other outlets (thirty-two (32) hours) per week. Considering only the locally produced programming of twenty-four (24) hours per week, this suggests that these Government access channels on average produce approximately twelve hundred (1,200) hours of original local programming per year. An interesting comparison is the number of hours of locally produced news programming by a local broadcaster. Assuming a morning, afternoon, evening and late night news programming during the week and just morning, evening and late

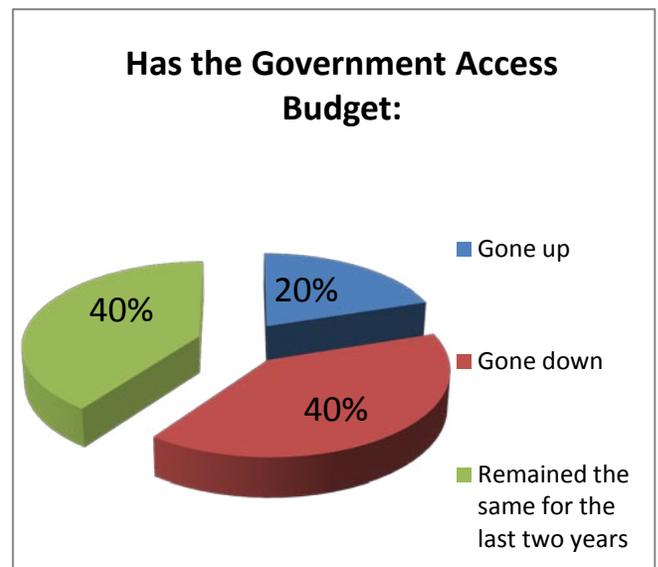


night on the weekends, the local broadcaster would only be producing less than thirty (30) hours per week compared to the twenty-four (24) produced by the Government access channels.

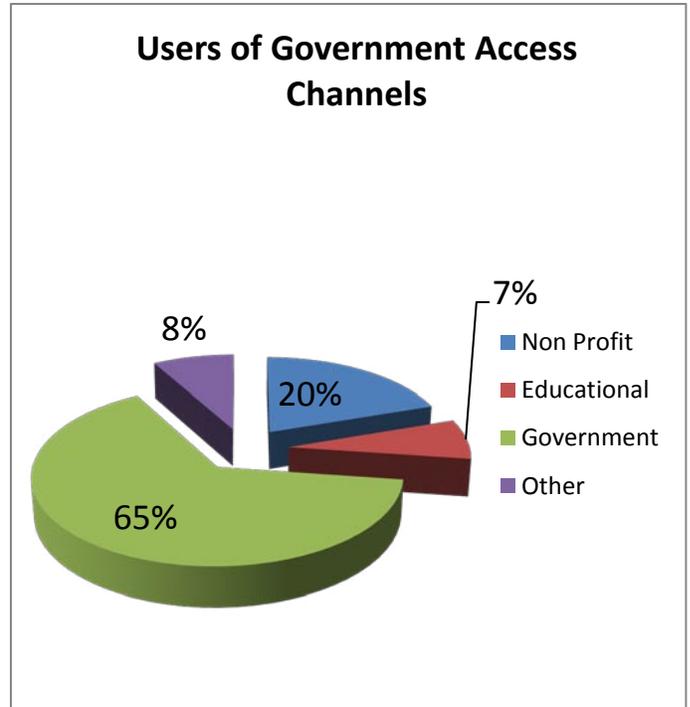
Funding of the Government access channels varies widely depending on the number of channels and the sources of funding, *i.e.*, franchise commitments, franchise fee or separate government access funding. The range of the respondent's answers on a per channel basis ranged from a low of \$24,000 to a high of \$1,125,000 with an average of just over \$260,000. Most of the respondents had a per channel funding of \$200,000 or less per channel.



The respondents were asked to identify what has generally happened to their funding over the past two years. Forty percent (40%) of the respondents either said their budget had gone down or remained the same. Only twenty percent (20%) responded that their budget for Government access had gone up.

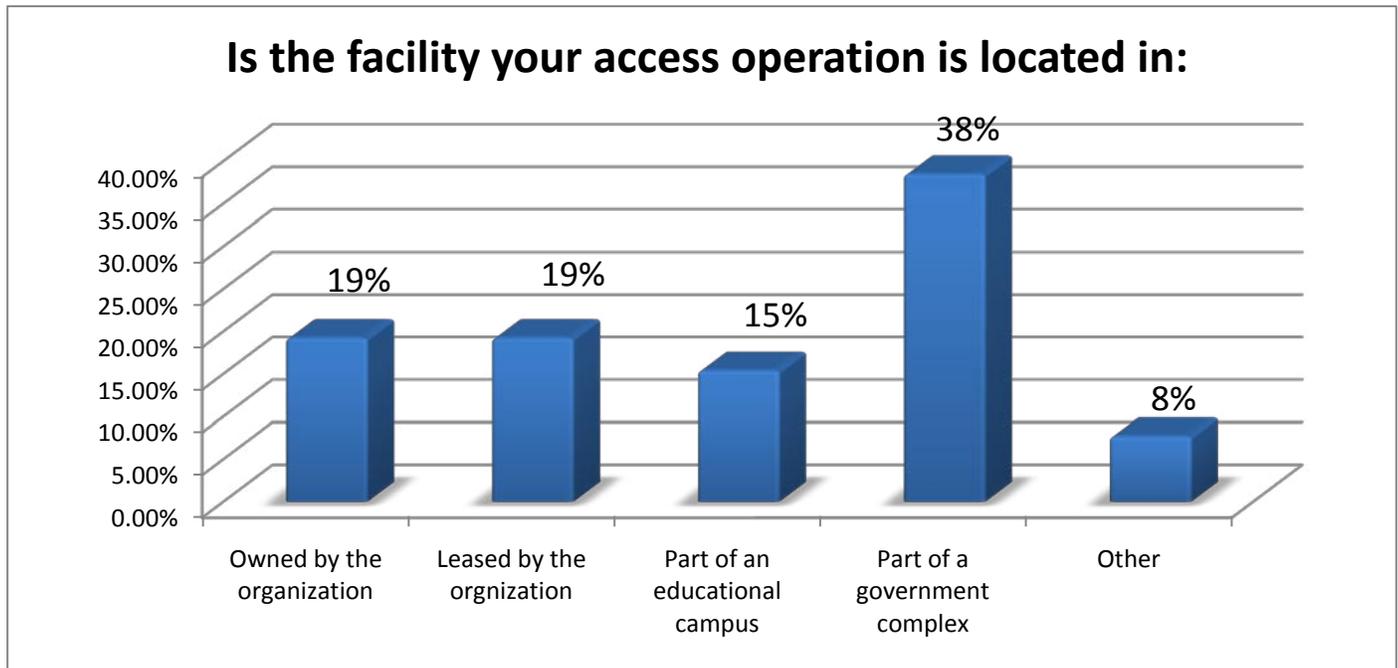


Finally the respondents were asked who uses the Government access channels. They were given four categories: (1) Non Profit Entities; (2) Educational Entities; (3) Governmental Entities and (4) Other. The respondents entered the number of each of these entities using the Government access channels. Sixty-five percent (65%) of the entities using the Government access channels were Governmental entities with the next largest group at twenty percent (20%) being Non Profit entities.



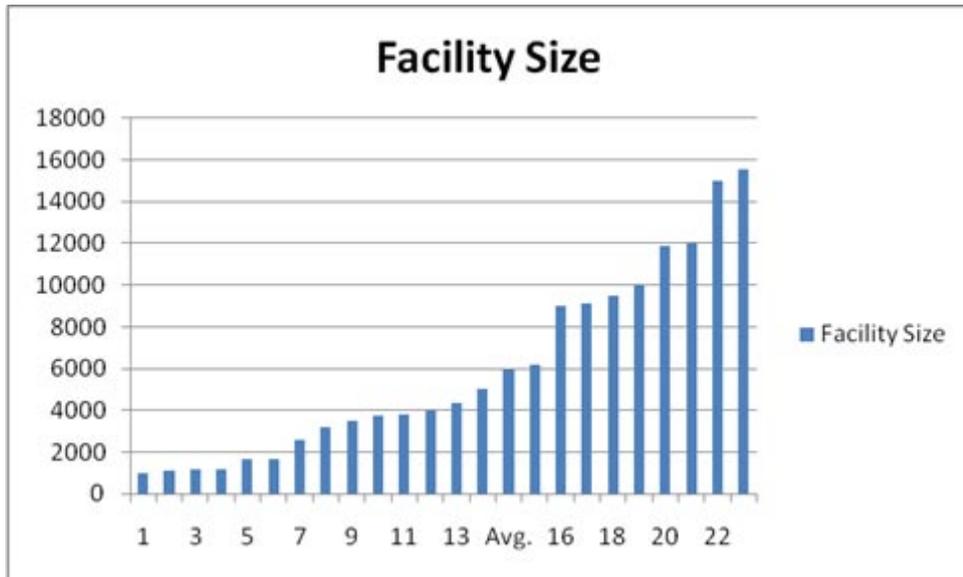
Facilities

Respondents were asked where their facilities were located. Going back to an earlier chart that showed the types of access operations participating in the survey, it is clear that several Public access operations are being housed in government complexes.

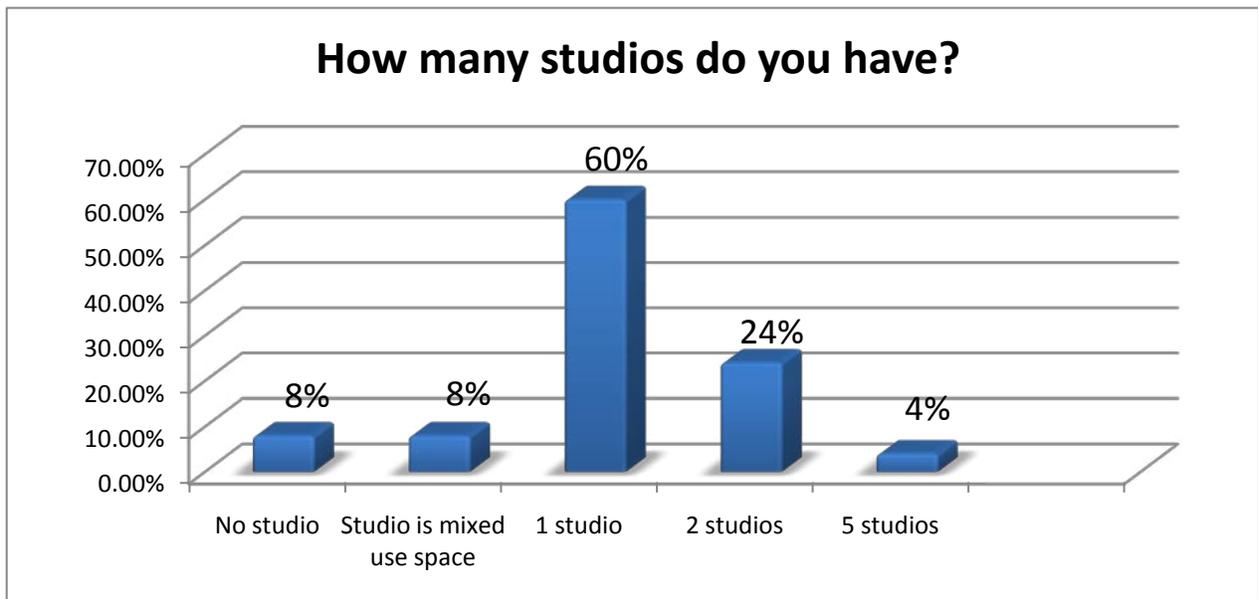


Those who gave “other” as an answer to the question of where their access operation was located said they paid a rental fee to the city for being housed in a city-owned building or they paid a nominal one dollar a year fee to the cable operator as rent for the facility.

Respondents were asked to provide the square footage of their studio (s). The majority of respondents had between twenty-five hundred (2,500) to five thousand (5,000) square feet of studio space. The smallest studio space was one thousand (1,000) square feet and the largest was a combined studio space (five studios) at fifteen thousand five hundred and sixty (15,560) square feet.²

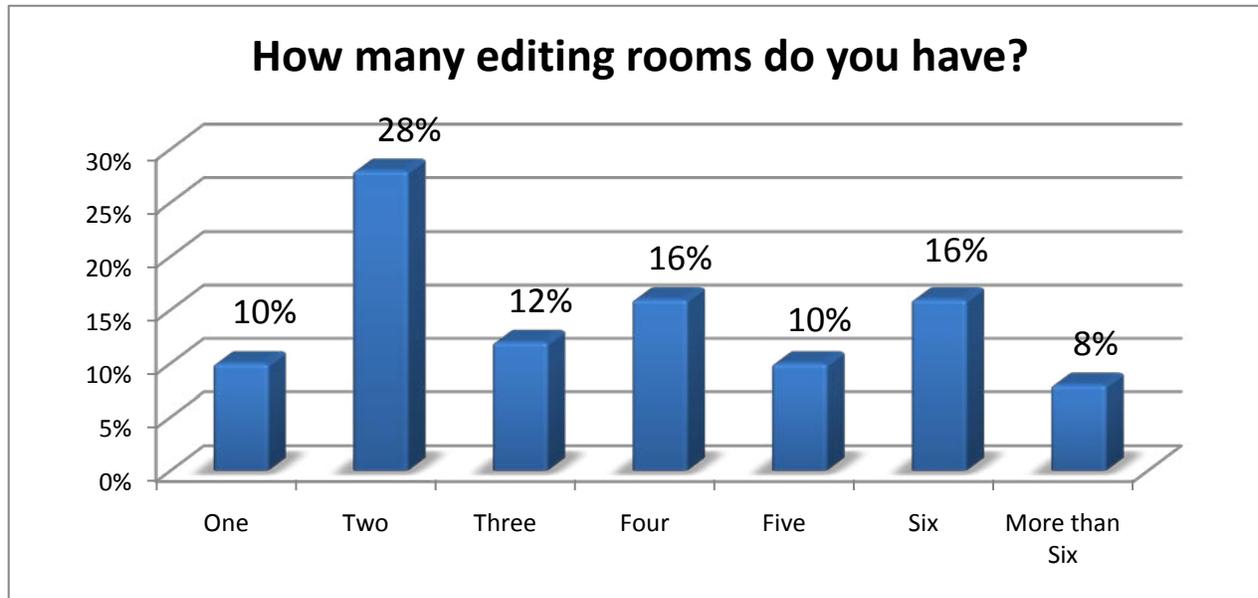


Next respondents were asked how many studios they had. The majority, sixty percent (60%) have one studio.



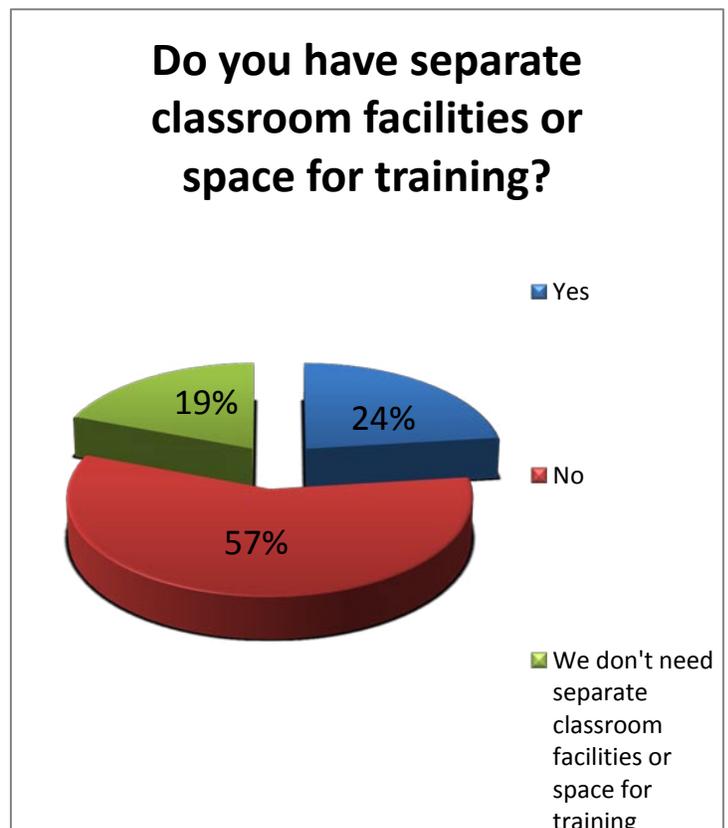
² It is quite possible that some of respondents may have interpreted this to mean the entire facility and not just the studio facilities.

Respondents were then asked about the number of editing rooms they had. Fifty percent (50%) have four (4) or more editing rooms. Most of these are Public access facilities that accommodate the public use of the facilities.



Next, participants were asked if they had separate classroom facilities or space for training.

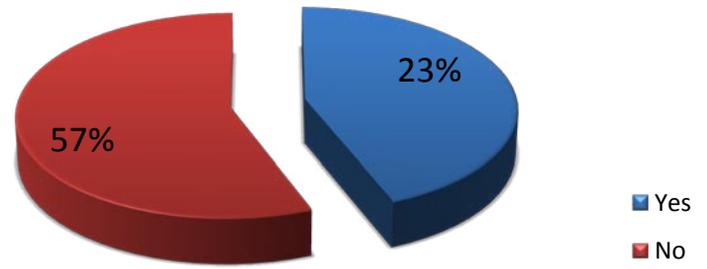
There were only twenty-four percent (24%) of the respondents who said they had separate classroom facilities or space for training. This is significant in that fifty-two percent (52%) of the access channels are Public access (or combination channels with a Public access component) and twenty-four percent (24%) of the channels are Educational access channels (or combination channels with an Educational access component). While over nineteen percent say they do not need separate space, there seems to be a lack of separate classroom facilities or space to accommodate the general public or student populations.



The next question asks whether the respondents have enough space in their facility to accommodate current and future access staff and users.

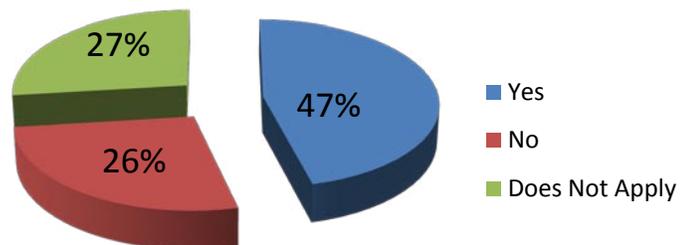
The “No” response rate to this question matches the “No” response rate to the previous question at almost fifty-eight percent (58%). Overall, whether it’s for training purposes or to accommodate staff, a majority of these PEG access operations do not have enough space.

Do you have enough space in your facility to accomodate current and future staff and access users?

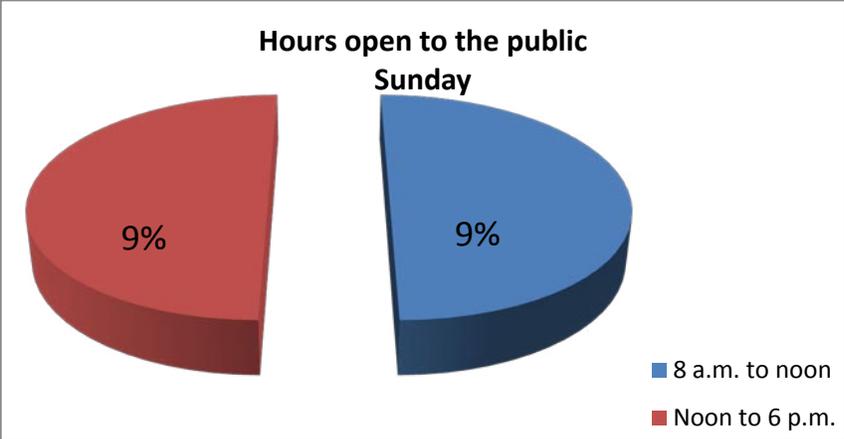
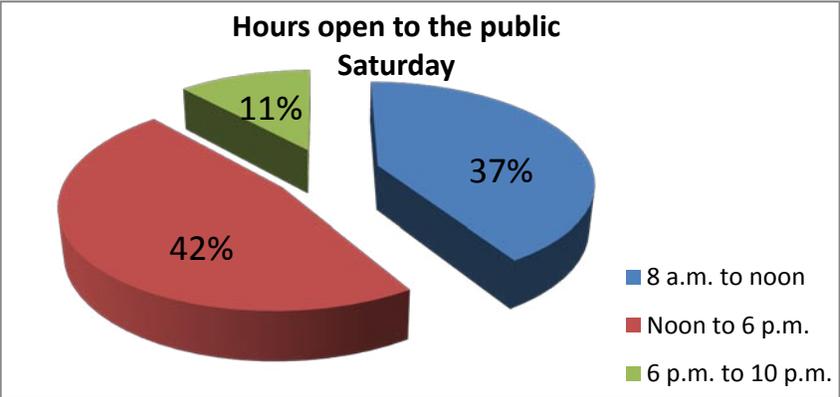
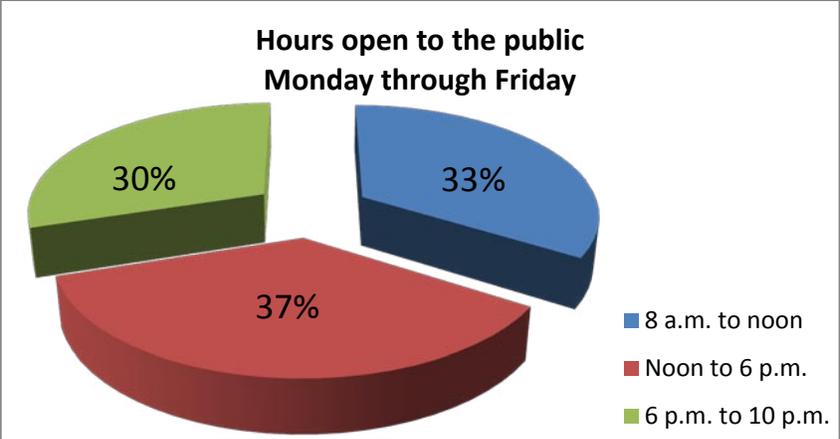


Asked whether or not their facility was open to the public, the answer of forty-six percent (46%) is a bit lower than the fifty-two (52%) percent of access channels that are Public access channels. This is because one Public access operation channel does not have a studio and one Public access operation did not answer this question.

Is your facility open to the public?



Of those whose facilities are open to the public, the following is the schedule of hours they are open. The majority of access facilities open to the public, almost sixty-seven percent (67%) are open from noon until 10 p.m. However of those, roughly thirty percent (30%) are open after six p.m., hours generally considered to accommodate working people who might wish to use the facilities. Additionally, over forty-two percent (42%) indicated they were open to the public between the hours of noon and six p.m. Only two of the Public access facilities responded that they were open on Sunday.

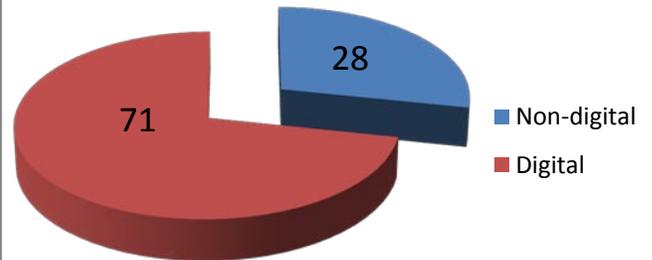


Equipment

The respondents had a total of three hundred and thirty-seven (337) cameras. Of those, ninety-nine (99) were in studio cameras and two hundred and thirty-eight (238) were remote cameras. The breakdown of the type of cameras in studio versus remote cameras is as follows.

The average number of in studio cameras per respondent was 4.3, with two respondents answering that they did not have in studio cameras. The average number of in studio digital cameras per respondent was three (3).

In studio cameras by type

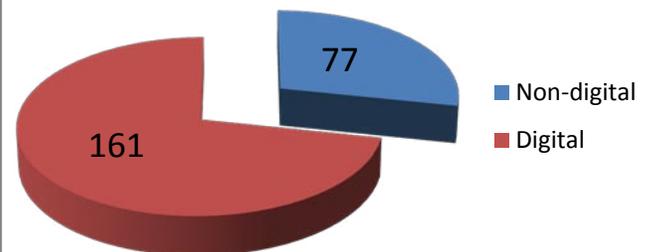


The average number of remote cameras per respondent was 9.9 with one respondent answering that they did not have remote cameras. The average number of remote digital cameras per respondent was 6.7.

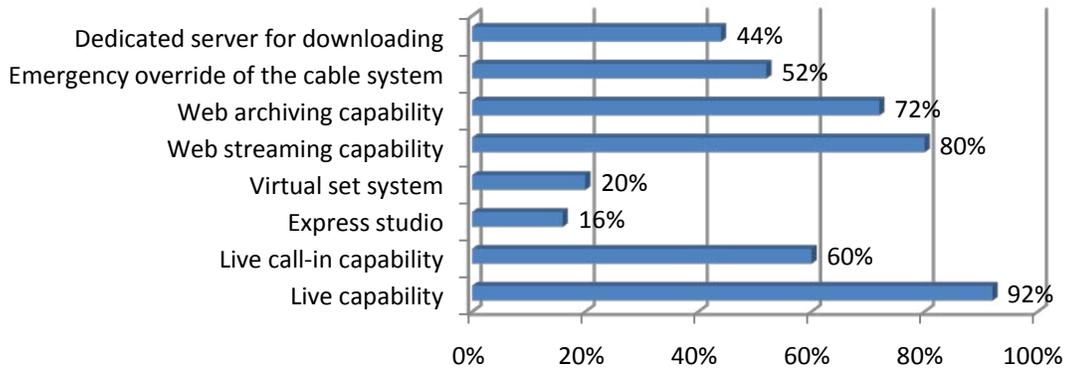
Respondents were then asked about the type of equipment and/or capabilities they had.

Next, we asked respondents about other types of equipment. Two of the more interesting findings is that only forty-four percent (44%) have satellite capability and fifty-six percent (56%) have remote van units. Satellite capability allows access channels to download imported programming such as NASA or Deep Dish TV. Not having remote van units puts access operations at a disadvantage for covering community events. Additionally, less than fifty percent (>50%) had a dedicated server for downloading files and only twenty-percent (20%) had virtual set systems. However, ninety-two percent (92%) had live call-in capability and eighty percent (80%) could web stream.

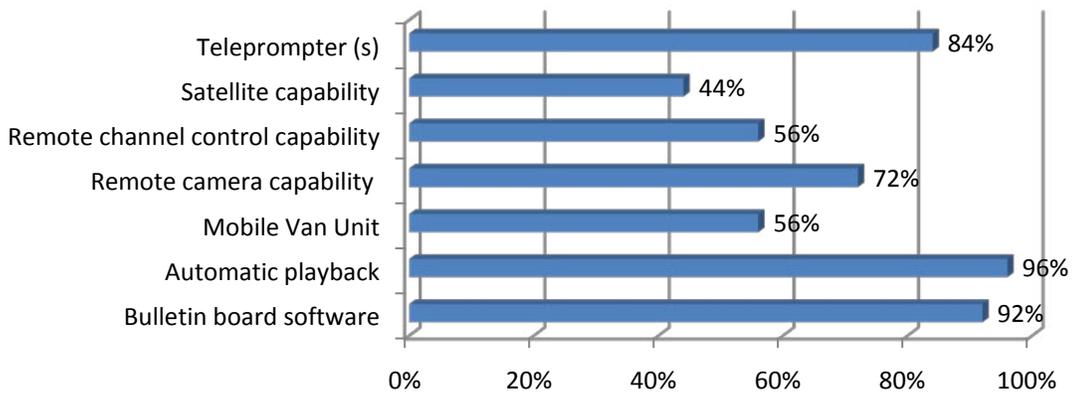
Remote cameras by type



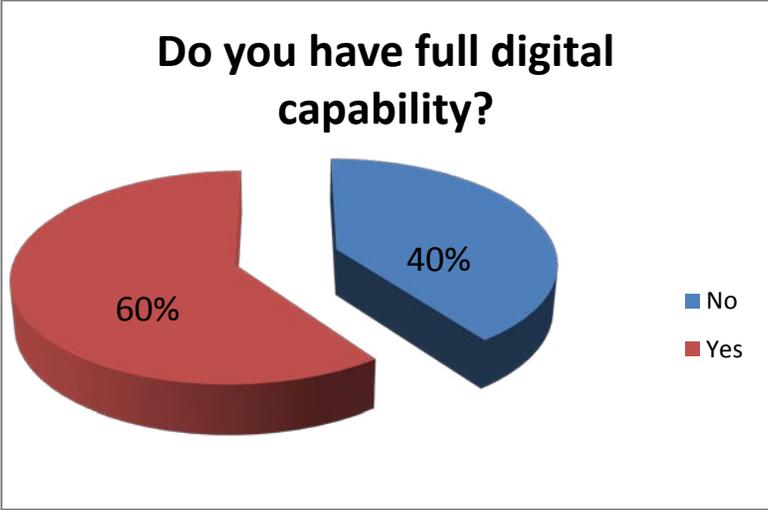
Type of Equipment/Capability



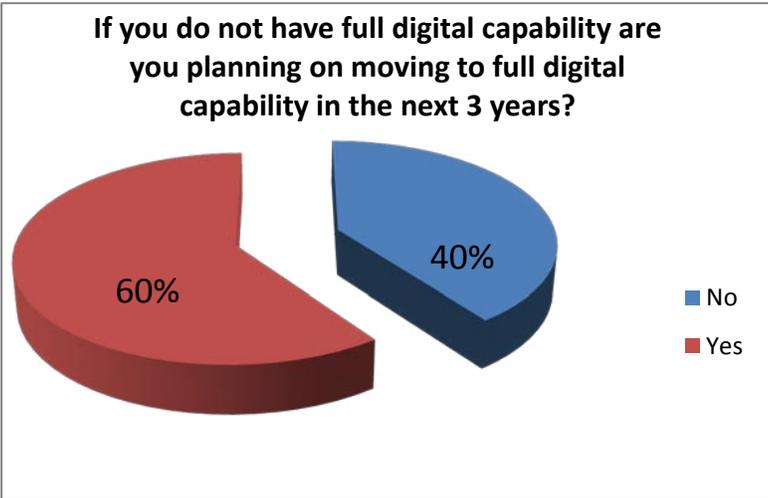
Type of Equipment/Capability



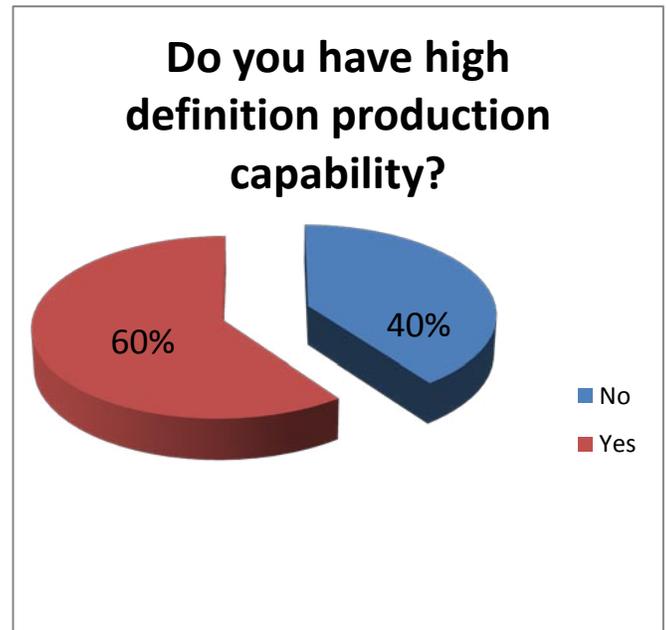
Sixty percent (60%) have full digital capability. Forty percent do not. This could be problematic in the next few years as more systems convert to all digital.



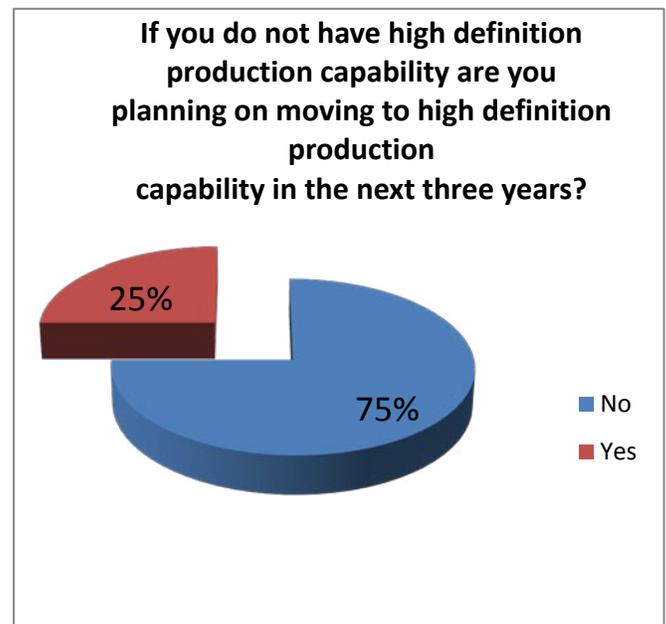
Of those who do not have full digital capability, forty percent (40%) do not have plans for moving to full digital capability in the next three years.



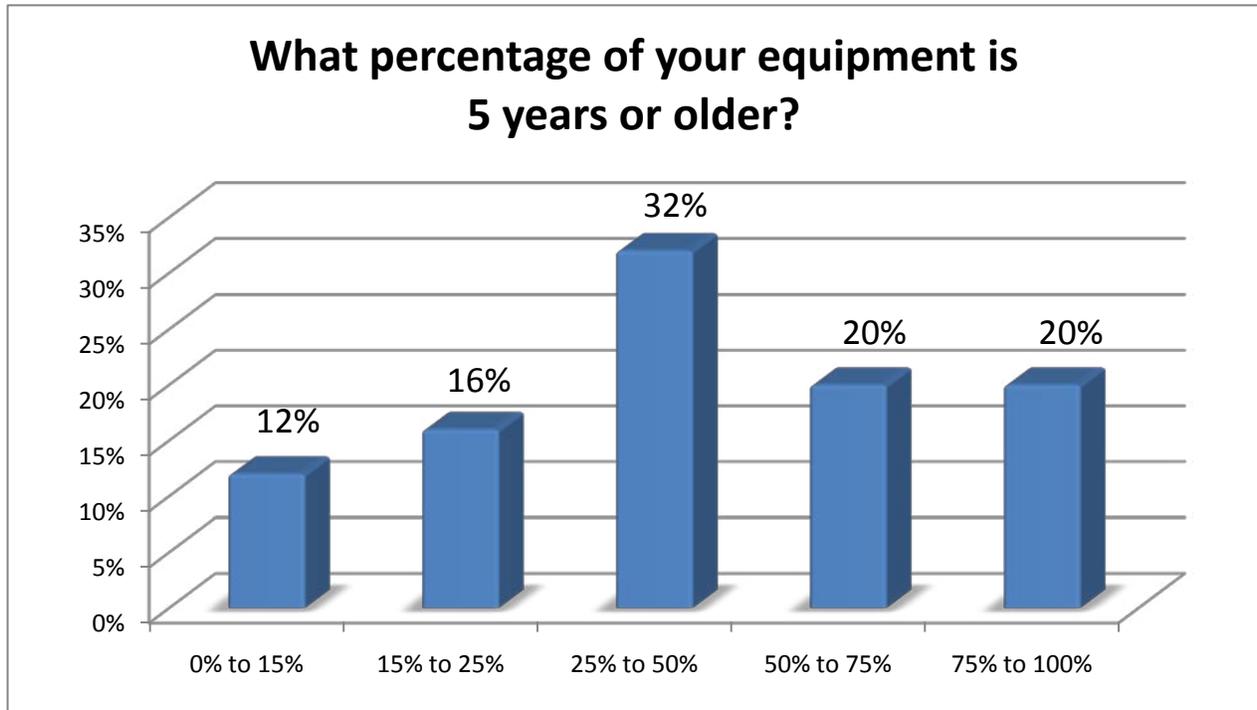
Sixty percent (60%) of the respondents said they have high definition production capability and forty-percent said they did not. We can assume that all of those who responded in the previous question that they have full digital capability have at least some of their equipment that is high definition.



Of those who do not have high definition capability, twenty-five percent (25%) plan on moving to high definition capability in the next three years. These numbers suggest that of the group that responded they will be moving to full digital capability, a portion of them will be moving from no digital capability to high definition.



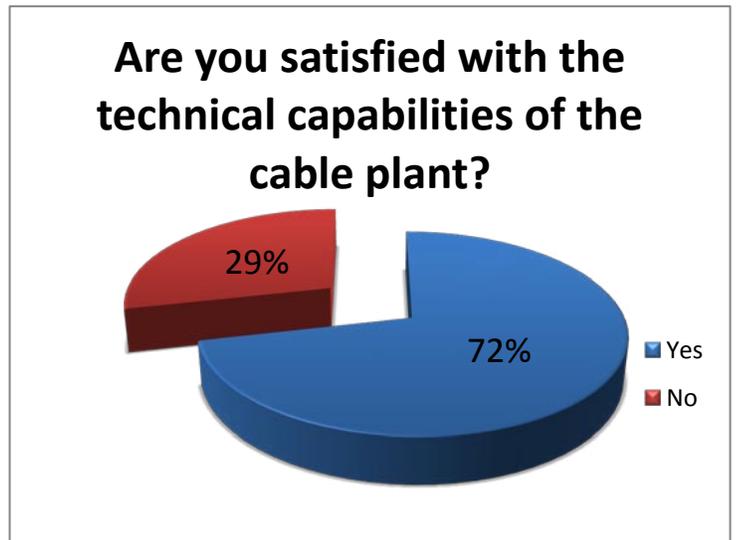
The next question regarding the age of their equipment is important because access operations often have to refurbish or continue to use equipment that is out of date because of tight budgets that do not allow for frequent updating of equipment. Forty percent (40%) of the respondents answered that fifty percent (50%) to one hundred percent (100%) of their equipment is five years or older. This will become a major issue for access operations in states where PEG access television capital support funding had been or will be eliminated, particularly for Public and Educational access operations whose equipment is used by students and/or the general public.



Technical

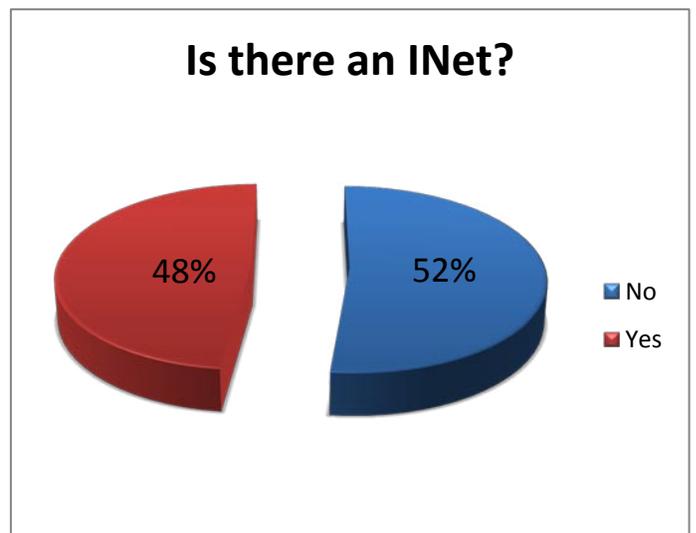
When asked if they were satisfied with the technical capabilities of the cable plant, over seventy-one percent (71%) of respondents said “Yes” and over twenty-eight percent (28%) of the respondents said “No.”

Respondents who said they were not satisfied with the technical capabilities of the cable plant were then invited to provide a narrative explanation. They cited the following as reasons for their dissatisfaction: noise on the channel; tiling; loss of audio; image and signal quality; reliability; degradation of signal; slow response to issues; and lack of High Definition availability.

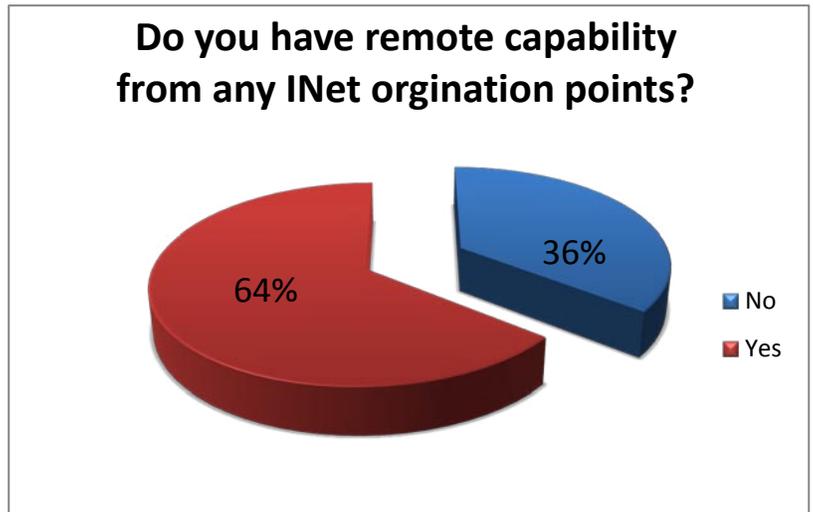


Of note in these comments, AT&T is only cited one time. The comments seem to indicate that for these respondents, PEG channels experience problems from incumbent operators that have nothing to do with the platform of delivery but the delivery itself. Signal quality is the number one reason for dissatisfaction.

When asked if there were an INet, over forty-eight percent (48%) responded “Yes.”



Those who responded “Yes” were asked if they had remote capability from any INet origination points. Almost sixty-five percent (65%) of the respondents said they had remote capability from INet origination points. This would indicate a good amount of remote production.



Attachment A

Which of the following types of programming are on the channel? Check ALL That Apply

I. Government Services and Meetings

City/County Council Meetings (Zoning Boards, etc)

Government Agency Programming (such as Police and Fire Departments) Safety Programming

Health Programming

Parks and Recreation Programming

Police and Fire Department Programming and Training

City/County Sponsored Events

II. Educational

School Board Meetings

Focus on Schools Programming (curriculum reviews, district mapping, school schedules)

School Sports Programming

School Arts Programming

Homework Help Shows

Academic Competitions

Higher Education Programming (spotlight on colleges, universities, entrance requirements)

Distance Learning (for and not for credit courses)

Higher Education Sports Programming

Higher Education Arts Programming

Higher Education Academic Competitions

III. Community Awareness

Community Arts and Festivals Programming

Community Information Programming (spotlight on recreation, dining, entertainment, shopping)

Neighborhood Shows

Local History and Culture Programming

IV. Special Interest

Seniors Programming

Shows by and about Children

Shows by and about Persons with Disabilities

Second Language Programming

Ethnic and Cultural Programming

V. Religious and Lifestyle Programming

Women's Programming

Gay and Lesbian Programming

Fitness and Lifestyle

Home and Garden Programming

Animal Shows

Religious Programming

VI. Political and Other Programming

Political Programming (discussions, debates, candidates, "get out the vote," etc.)

Military Programming

Music/Entertainment Programming

General Non-Profit Programming

Other

Attachment B

Media at the Margins: Policy and Practice in American, Canadian, and British Community Television

CHRISTOPHER ALI
University of Pennsylvania

This comparative study addresses the policies and practices of community television in the United States, United Kingdom, and Canada. In particular, I examine how community media organizations are transforming themselves to meet the demands of a digital world, and how these experiences are reflected in policy and regulation. Findings suggest that the policies governing community television do not correspond to what has been experienced by practitioners. Drawing from theories of the public sphere, the argument is made that policy does a disservice to community television by failing to acknowledge the importance of place, bodies, and practice. This is problematic, as it fails to distinguish community media from user-generated digital content.

Recent years have witnessed a tremendous degree of campaigning by community media organizations in Canada, the UK, and the United States. In Canada, January 2010 saw the Canadian Association of Community Television Users and Stations (CACTUS) launch a nation-wide campaign to “put community back in community TV,” in anticipation of a review of community television by the Canadian Radio-Television and Telecommunications Commission (CRTC; Edwards, 2010). In the UK, the Community Media Association continues to lobby the BBC and the Office of Communications (OfCom) to recognize the value of community media. In the United States, 2009 represented a watershed moment, when Philadelphia witnessed the launch of its first community television station, ending a 27-year struggle for public access television in that city.

Community media are neglected aspects of our media landscape that represent the public’s only opportunity to use the infrastructure of mainstream media to produce and disseminate their own content and voices (Howley, 2005; Rodriguez, 2001). With the advent of user-generated digital media, however, the relevance of *community television* is being questioned; it is accused of becoming an anachronism in today’s contemporary mediascape (see Fuentes-Bautista, 2009; Timescape, 2009; Waldman, 2011). The anecdotes above illustrate an attempt to engage in this debate. Moreover, they join a conversation lamenting community television’s position at the margins of our local, national, and global mediascape (Howley, 2005; Rennie, 2006). They suggest community television continues to be both a “living organism,” and a site of contestation—an ongoing struggle over place, agency, representation, and

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identity (Rodriguez, 2001, p. 158). These areas of contestation find their fulcra in the four intersecting nodes of *policy*, *practice*, *publics*, and *place*, and it is within these spheres that this research is situated. This research seeks to address the experiences and challenges of community television in the United States, Canada, and the UK.¹ More specifically, this research asks the questions: How are these experiences reflected in regulation? And, how do these policies and practices compare across national boundaries, particularly when discussing digital media? Such questions take on new urgency as concern grows over the potential loss of diversity of voices brought on by corporate convergence (McChesney, 1999). This study is based on 10 in-depth interviews with community television practitioners, organizers, and advocates in Canada, the United States, and the UK. Given that the focus of this paper is on the intersection of practice and policy, these interviews were compared against a review of recent regulatory initiatives from the CRTC, FCC, and OfCom. These three countries, moreover, were not chosen randomly, but rather, because they are nations with advanced communications systems, and perhaps more important, because they share a regulatory commitment to serving that mercurial notion called "the public interest."²

This comparison reveals a bifurcation whereby the policies governing community television do not correspond to what has been experienced by practitioners and advocates. While the practitioners I interviewed emphasized experience, practice, and physical place as salient attributes of community television, policies tend to internalize the value of community television as residing exclusively in *content*, and not in the places or publics formed in the creation of this content. I do not seek to refute this position. Giving voice to the voiceless is crucial in a mediascape dominated by hegemonic capitalist interests (Howley, 2005; Rodriguez, 2001). Nevertheless, content does not represent the total value of community television or community media more broadly. In contrast, findings suggest that the strength of community television lies, in part, in its relationship to physical *place* (Howley, 2010, p. 9)—that is to say, in its ability to bring community members together in time and space for the purposes of education, deliberation, networking, community building, and of course, media production. Put another way, the benefits of community television reside not only in its content, but in its practices. While ignored by policymakers, this is not a new observation. King and Mele, for instance, noted in 1999 how a rhetorical devotion to community television's contributions to the deliberative ideation of the public sphere, "focus[es] too narrowly on the *content* of such programs and discount[s] critical possibilities inherent in the *production* of public access television," (1999, p. 607). What sets this study apart is the addition of a critique of policy, as well as its expansion from the microcosm of one organization to a comparison of practice and policy among nation-states.

Policy has long centered on community television's ability to foster freedom of expression and contribution to deliberation in our democracy. In doing so, it has created a discursive "community media public" based solely around content. Through this lens, community television has been called an "electronic public space" (Aufderheide, 1996) or an "electronic soap box" (Linder, 1999; United States,

¹ I use "community television" to delineate the scope of this research. On occasion, "community media" is used to discuss the larger field or community media centers and organizations.

² The U.S. Telecommunications Act of 1996, the 1991 Canadian Broadcasting Act, and the UK Communications Act 2003 all reference broadcasting in the public interest.

1984a, p. 4667)—a vehicle for citizens to discuss, share, and deliberate matters most important to them. While praiseworthy, such a myopic reliance on content reduces community television purely to output. Policy rhetoric rests on the normative assumption that equates the value of community television with a disembodied, Habermasian public sphere (1974) at the expense of the corporeal, the experiential, and the practical. This is problematic, as it fails to distinguish community media from YouTube or any other user-generated digital platform. This perspective needs to be expanded to understand the totality of values and strengths engendered within these media practices, and I suggest that policy does a disservice to community television by failing to acknowledge the importance of place, bodies, and practice. This critique of regulatory obliqueness and the disembodied public sphere of community television policy is framed through the discussion of three themes. Drawing from Castells' (2000, pp. 18–20) and Giddens' (1991, p. 18) differentiation between "place" (territorially bounded localities) and "space" (dislocated and disembodied relationships), these themes are labeled: *place*, *space*, and *interface*. *Place* refers to the community, locality, and physical presence of community television organizations. *Space* refers to the relationships between community television and dominant institutions. Here, I discuss the difficulties in creating spaces and publics of attention and recognition. *Interface* refers to the changing nature of the relationship between community television and technology, particularly as organizations struggle with the adoption of digital media.

Community Television/Community Media

Scholarship on community media has been on the rise in recent years, with a number of conferences, journals, and manuscripts devoted to the topic (Jankowski, 2003). While positive, such a resurgence suggests there is still much to be learned. This could stem from the observation that community media is amorphous, as the practices are globally dispersed and locally situated, and also incorporate any combination of media and people (Rennie, 2006). Studies, for example, have focused on community radio, television, and newsletters in North America (Howley, 2005; King & Mele, 1999; Linder, 1999); community television and radio in Australia (Rennie, 2006); Latino/a radio in the United States; community reporting in Nicaragua; video production among Columbian women (Rodriguez, 2001); and radio among Bolivian tin miners (Huesca, 1995). Such examples demonstrate that, while a central tenet of community media is its situatedness, it is not exclusive to any global milieu, or reliant on any one medium. Community media is what the community needs it to be. The most challenging aspect is definitional (Rennie, 2006, p. 22). Rodriguez, for instance, argues that we need to abandon the label "community media" (or "alternative media") and assume the moniker of "citizens' media," as it better embodies the qualities of collectivity, "contesting social codes," and empowerment (2001, p. 20). Adding to this difficulty is the observation that community media is not a stable, complete, or hermetic system. It is amorphous, mercurial, and more often than not, ephemeral (*ibid.*). Out of the myriad definitions posited (see Buckley et al., 2008, p. 206; Lewis & Booth, 1989, p. 9; Rennie, 2006, p. 4; Rodriguez, 2001), the most comprehensive comes from Howley, who defines community media as:

Grassroots or locally oriented media access initiatives predicated on a profound sense of dissatisfaction with mainstream media form and content, dedicated to the principles of free expression and participatory democracy, and committed to enhancing community relations and promoting community solidarity. (2005, p. 2)

This highlights the fundamental characteristics of community media as suggested by Nossek: *participation, access, and self-management* (2003, p. 308). As this research suggests, *location* or *place* is yet another salient attribute. Howley, for instance, notes how reports of the obsolescence of place and community within the discourse of globalization have been greatly exaggerated (2010, p. 8). In contrast, he argues that "place still has enormous relevance to human experience," and that community media become the locus where the "relationship between place and identity" can be experienced (*ibid.*, p. 9). All of this is to say that community media is intricately tied to the notion of place, and that this "sense of place" remains a seminal aspect of the human condition (*ibid.*).

What these disparate elements then point to is an understanding of community media as being less about content than about modes of production (King & Mele, 1999). This process-oriented approach has much in common with Couldry's (2004) call for a "media as practice" approach to communications research. Couldry seeks to "treat[] media as the open set of practices relating to, or oriented around, media," (*ibid.*, p. 117). In doing so, this approach "decentre[s] media research from the study of media texts or production structures (important though these are) and . . . redirect[s] it onto the study of open-ended range of practices focused directly or indirectly on media," (*ibid.*). This notion of media practice is adaptable to a study of community media, as it lends credence to the argument that the physical locale of community media is often regarded as one of relationship building and empowerment, rather than simply content production (Higgins, 1999; Howley, 2005; Rodriguez, 2001). Indeed, it is an example of what "people [are] *doing* in relation to media across a whole range of situations and contexts" (Couldry, 2004, p. 119).

There is disagreement, however, as to the next phase for academic inquiry. Rennie argues that a policy approach is needed, so as to "get away from notions of community media as something resistant to government and the economy" (2006, p. 6). Conversely, Jankowski argues for the need to supplement policy analysis—something he sees as existing in abundance—with theoretical and empirical model building (2003, p. 10). In agreement with Rennie, however, my research has also observed a paucity of critical scholarship on community media policy (see also Howley, 2010). Two further gaps appear in our knowledge of community media. First, scholars such as Rodriguez (2001), Howley (2005), and Huesca (1995) remind us power does not exist in binary—those with and those without. Rather, we need to move away from this reductionist notion and see it more along a spectrum. The authors intimate the need for a more nuanced hermeneutic of community media and power. Second, while we are confronted with a number of insightful case studies, and derived from them, a number of theoretical explanations championing the importance of community media as a democratic process, few studies have used these case studies to compare community media at the level of the nation-state. What I suggest is an alternative path scholars could follow to continue expanding our knowledge of community media—one that merges Rennie's (2006) assertion for policy critique, and Jankowski's (2003) argument for mid-level, empirical, and theoretical model-building. I accomplish this through presenting a critique of policy and putting forward an empirically-based argument centered around the concepts of place, practice, and publics.

Policies and Publics

Despite Canada, the United States, and the UK having distinctive media systems, *community television* generally follows the same framework. That is to say, a public access model, whereby community members are able to produce and broadcast their own programs using equipment and training provided by the station. The majority of community television stations in Canada and the United States are distributed through cable systems, while in the UK, where cable penetration is relatively low, organizations have either been able to secure a coveted terrestrial broadcast license ("Restricted Service License") or take advantage of Internet broadcasting (Timescape, 2009).

The United States is perhaps most infamous with respect to public access television—a country where free expression takes precedent, where community television stations are first-come-first-served, and where the popular film *Wayne's World* holds key representational space. While there has yet to be a census of public access stations, recent estimates place the number at around 3,000—making them rather ubiquitous entities among American communities (Goldfarb, 2008, p. 1). Traditionally, public access has been regulated at the municipal level, where the municipality grants a franchise to a cable operator in exchange for certain benefits—such as public, educational, and governmental ("PEG") access channels. Non-profit organizations, municipalities, or cable operators typically run these channels. Public channels stand for open public access, educational channels tend to air lectures and classes, and government channels air city council meetings and other government information—although these boundaries are often blurred (Linder, 1999, p. xxv). Surprisingly, the United States lacks a coherent community television policy. Rather, community television regulation is dispersed amongst a myriad of congressional legislation and FCC regulations, most of which generally address the distribution of cable systems.³ Like much policy in the United States, community television has also been shaped by a number of Supreme Court cases (i.e., *Denver Area v. FCC*, 1996). These discrete rulings and regulations typically focus on elements such as franchise fees, rollout, and in the case of the 1992 Cable Act, content regulation and First Amendment implications (as was argued in *Denver Area v. FCC*). There has been little discussion of place, physicality, or publics. Rather, recent policy tends to follow the trajectory laid out in a congressional report on the 1984 Cable Act:

A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public—the fundamental goal of the First Amendment—without the need to regulate the content of programming provided over cable. . . . Public access channels are often the video equivalent of the speaker's soapbox or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. (United States, 1984a, p. 4667)

³ See United States, 1984b, 1992, 1996; FCC, 2006, 2007.

Note here the reliance on the tropes of the First Amendment, orality, and the marketplace of ideas—which connote content and dissemination, but focus little on modes or practices of production (King & Mele, 1999).

The more recent issue of statewide franchising has further pushed policy toward a disembodied space. Finding strong support in the lobbying efforts of telecommunication providers amongst state legislatures, this provision “allows new providers (i.e., phone companies such as AT&T and Verizon) to bypass municipal franchises and apply for a statewide franchise permit,” (Goldfarb, 2008, p. 5). Distancing franchise authority from the municipality allows these companies to usurp local authority, avoid individual franchise fees, and leave many PEG organizations without sustainable funding. Despite vehement protest by PEG advocates, over 20 states have enacted such legislation, resulting in the reported closure of dozens stations, and the reduction of services at dozens more (Goldfarb, 2008, pp.5–8; Linder & Kenton, 2010, p. 12; Waldman, 2011, p. 300, quoting reports by American Community Media). Statewide franchising is thus a further example of the *lacuna* between the practices, policies, and places of community television.

Canadian community television policy is much more explicit than U.S. policy, having been enshrined as one of three components of the Canadian broadcasting system (in addition to private and public broadcasting) in the 1991 *Broadcasting Act* (Canada, 1991, §3.1.b.). This provides the CRTC latitude to regulate the service as it sees fit. Once the birthplace of community television (Howley, 2005, p. 52), Canada’s community television greatly resembled its American counterpart (cable-based, privileging access and participation) until 1997, when deregulation permitted cable operators to eliminate public participation and consolidate stations (Timescape, 2009). To correct this imbalance, recent years have witnessed a plethora of regulatory interventions in community television.⁴ For instance, in 2002 and again in 2010, the CRTC reversed many of these destructive allotments. In particular, the 2002 decision mandated for the first time, a quota for programming produced by members of the public (rather than cable employees) (CRTC, 2002, para. 55; CRTC, 2010, para. 10). This quota was set at 30% of weekly programming for community channels run by cable companies in 2002, and was increased to 50% in a subsequent 2010 decision to become effective in 2014 (CRTC, 2010, para. 10). Nevertheless, the focus remains on the creation and dissemination of content, rather than the provision of places for production and gathering. For instance, it was noted in 2002 and reaffirmed in 2010 that the main objectives of community television are to “ensure the creation and exhibition of more locally produced, locally reflective community programming; and to foster a great diversity of voices and alternative choices by facilitating new entrants at the local level” (CRTC, 2010, p. xiii).

There are, of course, exceptions to this generalization. For instance, the 2010 *Community Television Policy* encourages licensees of community-based television to, “Facilitate citizen access to the production of programming, and, provide training to those within the community wishing to participate in the production of programming” (ibid.). Despite this, we continue to see a favoring of content over practices in Canadian community television regulation. That is to say, we see a focus on the disembodied

⁴ See CRTC, 2002, 2009, 2010.

voice of the participant, rather than any concern for the democratic value of the practice and place of community television.

While possessing a much weaker community television system than Canada and the United States, regulators and legislators in the UK have begun to acknowledge the participatory value of community media. This, for instance, is demonstrated by the inclusion of community broadcasting in the 2003 *Communications Act* (Timescape, 2009; UK, 2003, §262, 359). Nevertheless, the landscape of community television remains bleak. Many explanations have been given for the lack of local and community television, including the failure of cable to take hold, a lack of funding, and the failure of the licensing regime (OfCom, 2009, pp. 104, 128; Timescape, 2009). The future is thus uncertain for community television, with only four restricted service license (RSL) holders in operation as of 2009 (compared with 3,000+ community stations in the United States and 139 in Canada; CRTC, 2009; OfCom, 2009, p. 21; Timescape, 2009). Of these four stations, moreover, only Belfast's NvTv is predicated upon notions of public access (OfCom, 2009, p. 37; Timescape, 2009).⁵ The challenges for all organizations remain securing the necessities of survival: favorable regulation and funding (Timescape, 2009). It has been suggested, therefore, that one should look to community radio for indices of potential regulation for television (OfCom, 2009). For instance, OfCom noted:

In addition providing unique content, community radio stations deliver wide benefits to people in the areas in which they broadcast. This includes offering training and work experience opportunities, contributions to local education and providing a voice to those, such as older people or speakers of minority languages, who may find it harder to access the media. (2010, sec. 2.2)

While the democratic value of community radio in the UK is acknowledged, community television still remains nascent, if not stillborn. That said, a recent OfCom report noted community media (or "ultra-local media") has the potential to:

Deliver media literacy in a range of forms, including content creation, critical appreciation, public service announcements, the skills to interrogate public data in order to make better-informed decisions about where—and how—to live, and the ability to hold local public bodies more effectively to account. (2009, pp. 127–128)

Unlike Canada and the United States, the challenge in the UK is how to operationalize this support. As was previously noted, infrastructure remains a barrier; hence we have witnessed a number of community television organizations transition or start-up online, to accommodate the "low overhead" costs of operating placelessly (Timescape, 2009). This dislocated form of community television, however, may not take full advantage of the embodied opportunities presented by community radio. For the moment, all three countries face challenges with respect to place and bodies in their respective policy and regulatory decisions. That places, practices, and embodied publics are not acknowledged does, indeed,

⁵ An unlicensed community station (Channel 7) is also operating through cable in Immingham (Timescape, 2009; OfCom, 2009, p. 43)

suggest that community television is no different from any user-generated digital platform. This could then lead to further calls for defunding or increased barriers to access and infrastructure capital.

Publics and Practices

What these aforementioned policies do reflect is a Habermasian public sphere (Habermas, 1974). That is, one where voice, deliberation, and ideological space for discussion are privileged at the expense of place, practice, and bodies. In his formidable work, Habermas envisions the bourgeois public sphere as that which mediates the spheres of society and state (ibid., p. 50). That is to say, a group of citizens (i.e., bourgeois, white, male) coming together to discuss "objects connected to the activity of the state," (ibid., p. 49). Discussion is the operative word here, as for Habermas, "a portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body," (ibid.). In Kulynych's words, the Habermasian public sphere equates democracy with participation, and participation as "discursive participation; it is communication governed by rational, communicatively achieved argument and negotiation," (1997, p. 320). Physical presence in a "concrete locale" is unnecessary for such active participation in, and contribution to, the public sphere (ibid., p. 322). While Habermas notes that such discussions often took place in the salons or cafés of 18th- and 19th-century European capitals, many have critiqued Habermas for his failure to recognize the importance of place and bodies (Kohn, 2000; Kulynych, 1997; Warner, 1993). Warner argues that this conceptualization of the public sphere permitted self-abstraction of only the privileged elite, leaving minorities and the underprivileged embodied, but voiceless (1993, p. 240). While it is argued that user-generated media rectify such imbalance between the powerful and the powerless (Bruns, 2008), what separates community television from this cacophony is not only the addition of voices to the marketplace of ideas, but rather its practices, places, and publics (see Aufderheide, 1996, p. 127).

To be sure, there is nothing wrong with deliberation, only that its articulation as the *sine qua non* of democracy is incomplete (Kohn 2000; Schudson, 1997). Kohn, for one, argues that deliberative democracy invites participation only from the elite, and as such, abstracts minority voices (2000, p. 426). It is not only that discussion reigns supreme in the disembodied public sphere, but that the notion of place is often rendered irrelevant. Policy mimics such an approach, granting salience to content, but not practice. In contrast, community television is able to encourage equal participation, or as King and Mele observe, the "different *experiences of production* [are] both meaningful to the individual volunteers and important to the constitution of the public sphere" (1999, p. 621). This closely resembles Friedland's conceptualization of a "communicatively integrated community," where the interactions of place (community), participation, deliberation, and communication (media) are seen as necessary components of a functioning democracy (2001, p. 359).

Paralleling this debate, content—a disembodied voice in the airwaves—is an insufficient descriptor for community television. Without the recognition of practice and place, community television policy has created what Turner has called a "demotic" public. That is to say, "There is not necessary connection between, on the one hand, a broadening demographic in the pattern of access to media representation and, on the other hand, a democratic politics" (2010, p. 17). Without acknowledging a connection to place, community television is seen, through the lens of policy, as another contributor to an unending

stream of voices, devoid of the empowerment capabilities highlighted by scholars (Higgins, 1999; King & Mele, 1999). Invoking another critic, policy has created what Fraser calls a "weak public"—deliberative, but unable to operationalize (1992, p. 134). Rather, in the bringing together of people in space and time, community television forms "strong publics"—"publics whose discourse encompasses both opinion formation and decision making," (ibid., p. 143). While such decision-making is localized at the community level, it nonetheless grants a certain degree of agency to community media organizations.

To recap, I have analyzed relevant community television regulation and legislation in the United States, Canada, and the UK, and found them wanting. More specifically, I argue that they fail to incorporate the salient aspects of place and the "experience of media production," favoring instead the end result—the product, the program, the content (King & Mele, 1999, p. 614). I argue that policy needs to conceive of community television in a more holistic fashion, taking into account the notions of publics, practices, and places. The following sections underscore this argument, using evidence from interviews with community television practitioners, advocates, and organizers.

Place

Of primary importance is the notion of place, and respondents advocated strongly for the situatedness of their community media practices. Situatedness here refers to both the physical infrastructure of the organization and the notion that public participation itself is a seminal characteristic. Public participation was called by one interviewee the "lifeblood" of community television, and the "cornerstone of the access system," suggesting the importance of this quality (personal communication, 11/9/10). The strongest reactions came from American respondents, whose public access television has traditionally been associated with notions of public participation, community reflection, and democratic practices (Linder, 1999). For respondents, community television is an arena in which a "community can speak to itself instead of being spoken to" (personal communication, 11/3/10). This is certainly warranted, given that many media outlets have gravitated away from "local accountability reporting" (Waldman, 2011). According to a recent congressional research report, community television is "used by 1.2 million volunteers and 250,000 community organizations," producing "20,000 hours of new programs per week"—statistics suggesting that these organizations are certainly in use (Goldfarb, 2008, p. 2). The notion of place, however, speaks to larger issues than just the dissemination of content. It speaks to enhancing diversity, facilitating conversation and discussion, empowering participants through media and digital literacy training, and fostering public participation. This last quality is especially salient among marginalized groups, such as ethnic minorities, the LGBT community, youth, and the elderly. Representatives from the lobbying organization American Community Television (ACT) also noted the transformation from "public access television stations" to "community media centers." This is an effort to remain relevant and provide resources such as training facilities, media literacy, and production classes. This also reflects a move from the seemingly pejorative notion of "public access television" to the more positive, "community media" (Ali, in press).

In addition to defining their practice as "community media," media literacy is a central tenet for practitioners, who maintain that their primary goal is the training of participants. ACT's executive director, Bunnie Riedel, also notes that such hands-on production and skills training can allow participants to

develop the critical skills necessary to decode the onslaught of media texts presented to Americans on a daily basis (personal communication, 11/3/10). Nantz Rickard of DCTV noted that one of DCTV's most successful endeavors targets youth in the Washington, DC, area through a "Youth Training Institute." This "institute" includes a television program (YAP-TV), a "training aspect, of running people through how to use the equipment, how create stories with it" through a partnership with the Smithsonian Institute, and an art and media literacy program. They also hold an internship program and other "experiential" programs, so that "youth can come to us after school and participate regularly, learning not just how to use the media and the tools, but to be part of how the community interacts with us" (personal communication, 11/9/10). Such opportunity for diversity speaks to the potential of community media centers to physically bring people together, and it also represents evidence many advocates use to defend their practice against detractors who argue that community-participatory media should only exist in the virtual domains of YouTube (see Fuentes-Bautista, 2009; Linder & Kenton, 2010, p. 7).

Contrary to the case of the United States, the Canadian public has largely been ignored or even barred from participating in community television since the late 1990s. Jim Macgregor observed how Winnipeg community television has taken a circuitous path with respect to place and publics. Community television began in Winnipeg as something dedicated to public participation and access. During these early decades, Videon Cable-11 operated with few censoring guidelines, and Macgregor could recall only a handful of instances where a producer was cautioned or a disclaimer aired. This ethos of democratic video production began to wane in the mid-1990s, finding its apex during the 1997 Winnipeg flood. During this "flood of the century," Videon took on a new role in regards to place, one that saw it divorce itself from the participating public and embody the conventions of mainstream broadcasting. Management committed to covering the flood in its entirety, with over 180 volunteers, including anchors and reporters, working 24 hours a day. This transition to a new genre of community television saw the channel dedicate itself to "professional" community coverage. It soon became the template for all Videon programming. Reflecting an implicit binary, this is an interesting divergence from the American experience, where direct operation of community television stations by cable companies is generally taboo. Nonetheless, with the recent round of CRTC (2010) regulations requiring quotas for public participation, Shaw-TV (as it is now known) is working toward re-integrating the public into its operations. Macgregor is quick to add that this will not be a "regression to the 1970s," but a new model, one balancing community-initiated with company-initiated programming (personal communication, 11/21/10).

In contrast to the U.S. "public-participatory model," and the Canadian "hybrid model," the British case represents a rather dislocated alternative to notions of place. Since local television is relatively nonexistent, many organizations (i.e., Southwark-TV and MonTV) have migrated to the Internet for distribution (OfCom, 2009, p. 43). For Southwark-TV, the Internet reduces overhead, allowing the organization to devote more resources to video production and training. Operating under the positioning statement, "Web, Event, TV" Southwark-TV, and its parent, the Community TV Trust, aim to incorporate media with local life by showcasing community initiatives and events, along with school and youth-produced projects. It is not, itself, a television station, but rather, a resource for community members who wish to produce their own local media (C. Haydon, personal communication, 11/3/10). Given its online presence, founder Chris Haydon was adamant that, while the organization itself does not operate as a hub, it tries to create hubs in schools, community centers, and the like, and it focuses its energies on

creating “shared public spaces” and places for physical meetings (personal communication, 11/3/10). Haydon has a great fondness for the democratizing potential of the Internet, but he admits the situatedness of community media is the crucial factor:

But the thing that I like most, actually, even pretty much above the wonder of the web as the great solution for delivering this stuff, is bringing people together physically. . . . Some will be 12-years old and some will be 50 and have no experience whatsoever. And each will be as proud, or as frightened, or as timid, or as rewarded to have feedback. To feel somebody understands. And this is somebody who is in effect a neighbour, who lives in their area. . . . So that mix of media, that overlap of media and local life, the mix of media practice and putting on local events to bring that overlap into life. So that media sharing isn’t a virtual experience, there are other important dimensions. . . . At the end of the day, media is just something that happens between people. (personal communication, 11/3/10)

Southwark-TV thus represents a disembodied place for community television, one without a central locus, but that nevertheless speaks to the central tenets of community media in giving voice to the voiceless and place to the placeless. Such a telling should not suggest an idyllic situation whereby community television organizations are free to control their own destinies. Rather, these media institutions continue to be plagued by a constant lack of funding, regulatory invisibility, and public irrelevance (see Timescape, 2009). What these examples do illustrate is that, regardless of organizational, funding, or content models, community television remains firmly rooted in a notion of place (see Howley, 2010). The station, community media center, or impromptu screening room becomes the location from which actors are able to create a public of participants.

Space

The concept of space suggests the difficulties in forming publics that are not situated within this aforementioned locus of place. For instance, respondents noted the difficulties in forming alliances with regulators and policymakers, with cable operators, and even with the general public. This last aspect is most troubling to respondents. As a member of OfCom noted, “discoverability—people knowing that services exist, and, even if they know that it exists, understanding what the content is”—is a considerable challenge for community media practitioners in the UK (D. Radcliffe, personal communication, 12/14/10). Similarly, in Canada, the challenge lies in building public awareness:

[The] vast majority of Canadians don’t even know this stuff exists. There is a blackout in terms of public awareness that they have these rights and can go to a cable company and demand these resources and a cable company can’t say no in terms of programming if they don’t like it. (M. Lithgow, personal communication, 11/10/10)

As a result, “community television became increasingly irrelevant for most Canadians,” (ibid.). John Rocco of ACT also observed how one of his largest challenges as a community media executive and

national lobbyist is convincing the public of the value of community television (personal communication, 11/8/10).

In essence, the notion of “space” refers quite literally to carving out spaces of attention, recognition, visibility, and relationships in an over-saturated and over-stimulated mediascape. Space also refers to the ability to form a public or publics of supporters that are not immediately affiliated with the community media center at the grassroots level. Other difficulties in forming publics of supporters have occurred at the national policy level, where community media organizations struggle to create impact. While respondents from ACT noted success in forming relationships with regulators and members of Congress, they remain hard-pressed to battle against cable and telecommunication companies. Riedel argues that community television still lacks the regulatory mechanisms to contest poor treatment by cable companies. She contends that, rather than a comfortable rapport existing between community television, cable operators, and municipal governments, “cable operators are the foxes watching the hen house,” forming beneficial relationships with municipal councilors and waiting to revoke community television’s claim on channels. From her perspective, “It’s this knee-jerk reaction towards marginalization. And I think the other big challenge is finally being able to have a seat at the table. My joke is that access is always the red-headed step sister” (personal communication, 11/3/10).

American lobbying groups have had slightly more success than their Canadian or British counterparts in bringing community television to the attention of regulators. Still, though, in Canada, indicators suggest that this declaration may need reevaluation, since CACTUS was influential in pressuring the CRTC to enact definitions, access quotas, and cable company financial transparency rules (CRTC, 2010). While largely successful in this campaign, however, some express doubt as to the visibility of community television lobbying in Canada. In an extensive report submitted to the CRTC, for instance, Timescape Productions observed that, unlike the United States, Canada lacks an umbrella organization to lobby on behalf of community television on a nationwide scale (2009, pp. 22, 151). This is not insignificant, as it speaks to the aforementioned notion of “discoverability”—the ability to form publics of attention and support that are so crucial in matters of policy and regulation.

When compared with the United States and Canada, advocates in the UK have had least success. Haydon, for instance, noted how his organization is invested in lobbying OfCom, but acknowledges the difficulty in getting anything accomplished at the federal policy level (personal communication, 11/3/10). Additionally, the Community Media Association—the official organization of community media practitioners—has been involved in lobbying the BBC and OfCom. While community radio was officially sanctioned in 2004 with the *Community Radio Order*, little has been achieved with respect to television. For instance, while the 2009 “memorandum of understanding” with the BBC can certainly be read as an effort to carve out spaces of recognition, particularly in acknowledging the importance of community television, it has had minimal regulatory impact (see Community Media Association and BBC, 2009).⁶

⁶ The UK has announced the creation of a new local television license and service, although it is uncertain whether any license holder will incorporate participatory media practices (see DCMS, 2011).

This section addressed the challenges of forming supportive publics of citizens, regulators, cable operators, and politicians. This disembodied and abstracted public—one completely divorced from the sanctuary of the community media center—cannot be described as a “weak public” (Fraser, 1992). Rather, it is a hypothetical public, one vital to the survival of community media, but yet to be fully realized.

Interface

Indispensable to both place and space is the role technologies, and more specifically, digital media, play in mediating organizations, relationships, and campaigns. On the one hand, advents in user-generated digital media have allowed dissenters to argue community television is obsolete—a relic of the analog age—now that “anyone” can post video online. On the other hand, digital media has permitted organizations to expand their original purview and venture beyond the confines of cable television to reach broader audiences and engage in new forms of education (Fuentes-Bautista, 2009). Technology represents a dialectic position within community media discourse (see Ali, in press)—a tension certainly present in the statements of respondents. U.S. respondents remained hesitant to abandon television, while a Canadian respondent was mixed, and a British respondent was supportive. This last observation should not come as a surprise, as migration from television to Internet suggests “placelessness” (see Ali, in press) —a mode of dissemination no longer dependent upon infrastructure. This ethos resonates in the organizational structure of Community TV Trust, as it has abandoned reliance on television and embraced a purely online platform. For instance, Haydon observed:

[The] Web, magically and mystically, is the great answer to how do you deliver your local media that you produce. You don't need to reach in your television, you just need to get online. That has become ever easier, even here in the U.K., Web is the answer to getting you started, it costs next to nothing, and anyone can get to it, you can get your neighbour or the man three streets away. (personal communication, 11/3/10)

For Haydon, television has become “almost meaningless,” as practitioners can distribute their productions through online platforms. In contrast, Ian Morrison, founder of lobbying group Friends of Canadian Broadcasting, quoted Northrop Fry to describe his feelings toward online community television, asking, “where is here?” Morrison argues “the Internet works away from here”:

[The Internet] becomes distance free and is volume controlled so that while it can facilitate local communication, it also takes people's eyes and ears and attention away from local. . . . If there were to be a healthy community with democratic participation, by people who are informed and concerned about the things that are going on in their lives, community television would be a part of that. (personal communication, 11/2/10)

Morrison points to the first of two lines of defense against Internet migration. The first is in defense of television—a powerful tool for connecting locally-oriented people (Ali, in press; Fuentes-Bautista, 2009). The second is that of place and practice—a power inherent in the physical space occupied

by community media organizations (King & Mele, 1999).⁷ In the first instance, Rocco argues that, as long as commercial networks remain wedded to broadcast and cable distribution, then so should community television (personal communication, 11/8/10). Similarly, Rickard argues that YouTube is itself a mainstream presence, and that its narrowcasting ethos speaks to the individual, rather than the community:

We must recognize that the platform for community media is a direct reflection of the value we place on civic engagement, community participation, and the ideals of a democratic system. These attributes of our communities are the cellular structure of our democratic organism, and are at least as important as the various commercial and economic limbs that underlie most content generated by and for the dominant Market Presence. (personal communication, 11/9/10)

Importantly, Rocco and Rickard do not eschew the necessity of digital media, but do question its omnipotence. Rickard's station, for instance, has just undergone extensive renovation to include digital and HD compatible equipment, and both respondents are interested in broadening where citizens can access community content.

The second line of argumentation stems from the Internet's potential to usurp the physical places currently inhabited by community media organizations. This is what Riedel suggested when arguing that internet-driven capabilities such as File Transfer Protocols, which would allow users to remotely upload content to a community media "server," are harmful as they abstract human interaction from the mode of production (personal communication, 11/3/10). Addressing this pressing issue, Rennie (2007) makes the important distinction between "amateur" and "community" media. While both give participants access to the means of cultural production, the difference lies in the role of the community media organization. As she writes, community media organizations "provide access to production and distribution (as do other user-generated new media) *but also allow for participation in the running of the organization and the development of technologies*" (ibid., p. 31, emphasis added). Community media promote community and publics of citizens through both product (content) and modes of production (practice). To many, the place(s) and relationships in which community media are produced are as important, if not more, than content.

Contrarily, Macgregor observed how digital media have expanded freedom of expression and choice, and suggested that community television must "rise to that technology to survive and adapt" (personal communication, 11/21/10). He points to the need to follow the trends set by youth and is unsure a traditionally television-centered model is the way the community media world is headed. He tempers his call for a dislocated and disembodied space, however, by noting that the community television model will not die, but rather, must expand to become more accessible. For Macgregor, community television cannot hold on to a romanticized past, but rather, must continue to adapt:

⁷ See also Ali (in press) for an ethnographic study of how one American-based community television station negotiates the concepts of place, "placelessness," television and digital media/user-generated content.

I've seen an incredible evolution in terms of technology, in terms of how people receive information, in terms of how people spend their time in their day. They're not glued to their television anymore. . . . So, personally, I think the Internet has become the community channel, big time. But it's so big, so vast, that it has, in a lot of cases, excluded the little guy who just wants to do a show about speaking Yiddish or something. . . . It saddens me that that sort of change has taken place. And yet, it's also exciting. (personal communication 11/21/10)

Conversations about digital media and Internet migration complicate the reification of "place." If user-generated content is everywhere, what becomes of community television? Many have rightly argued that this is not an "either/or" scenario. Instead, digital media should be seen as a complement to, rather than as competition with, existing practices (Fuentes-Bautista, 2009; see also Ali, in press). This is particularly true of what community media advocates tell policymakers. For instance, Alliance for Communications Democracy informed the FCC of the vast amount of online content offered by PEG groups, arguing that PEG centers are "uniquely positioned to help residents to extend content created through PEG facilities using social media and Web-based resources" (Linder & Kenton, 2010, p. 16).

This article has presented three cases for the implementation of digital media within community television practices: Southwark-TV represents a purely online model; Shaw-TV represents a hybrid model; and PEGs represent a television-centered model, although PEG leaders recognize the need to incorporate digital media. All three, however, demonstrate that these organizations realize they must go beyond television production to remain relevant to their communities (Ali, in press; Fuentes-Bautista, 2009).

Conclusion

In examining the tensions between policy, practice, place, and publics, I have discussed two intersecting visions for community television, both of which are necessary to secure its continuing survival. Not wrongly, a policy perspective focuses on the content of community television—its output—and its ability to contribute to the marketplace of ideas and deliberative democracy. I have critiqued this perspective for being too narrow, as it omits mention of places, infrastructure, and bodies. It fosters a Habermasian public sphere, one where deliberation and conversation are primary, and all else secondary. While this perspective serves to give community television *space* in the mediascape—i.e., channel capacity for community voices, (modest) funding, and recognition—what has been argued throughout this article is that it is equally important to give participants a *place* in the mediascape. That is to say, community television and community media *writ large* create publics both of deliberation and of *participation and practice*. This is accomplished through the primacy of the community media center, through educational classes for skills beyond those of television production (for instance, youth media literacy or basic computer skills), and through becoming a place where citizens can physically gather in space and time. This dynamic engenders the discussion of place, space, and interface. It is understating the problem, however, to believe community media organizations are fully in control of their own destinies—policy is critical in this regard, as is the formation of publics of attention, and visibility. The onus, moreover, does not reside exclusively with policymakers. In contrast, progress has been made to at least recognize the

existence of community television by policymakers. Nevertheless, a more robust definition within regulation and legislation, through the inclusion of place, practice, and embodied publics, will aid in fostering a practice increasingly central to a communicative democracy (see Friedland, 2001; Howley, 2005; Rennie, 2006).

Part of the onus thus falls upon community media organizations, themselves, to continue disseminating their message and building the aforementioned publics of attention and recognition. Such a task lies at the heart of Radcliffe's comment that "discoverability" is a central challenge for community media organizations. This concerns the notion of visibility—how to make the organization visible to the right people and recognizable to publics. Without this, the question must be asked: Does the mere fact that community television exists as an alternative to mainstream media and as a physical place signal a victory for the types of democratic practices described at the onset of this article? Indeed, as hyper-local, non-commercial entities, is the fact that they can, and do, carve a space and place for themselves in a world dominated by mainstream, commercial media, enough? Answering this question is not easy. I suggest, however, that practitioners may answer "yes." Not because they do not want to expand, but rather, because they "continue to fight for their lives" (Bolan, quoted in DeLong, 2010, para. 1). They are aware that mere survival in a hostile environment is not enough. Visibility and the forming of supportive publics beyond the community media center may be a step toward securing a more robust contribution, both to their communities and to the larger project of democracy.

This research has its limitations. With only 10 respondents, I have only begun to discuss the experiences of community television in these countries. Additionally, participant observation and textual analysis should be employed to triangulate findings. Despite these caveats, this research has consequences for both the academic and community media reader. First, it demonstrates the tensions between policy and practice within the discourse and experience of community television. Second, it demonstrates the importance of physical place to community television and offers a strong rebuttal to those who argue that community television is obsolete in an era of digital platforms. Rather, community television's contribution in the mediascape is perhaps even more necessary given our schizophrenic relationship to place and community (see Castells, 2000; Howley, 2010). In an era dominated by commercial media and the distant voices of the national and supranational, community television often remains the lone outlet for community expression. More than giving voice to the voiceless, community media organizations give place to the placeless, through an emphasis on educational classes, media literacy, production, and the bringing together of citizens in time and space.

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Attachment C



Dear Valued Customer:

At Charter, we are committed to offering important local and national government affairs programming to our customers. Therefore, effective December 18, 2009, we will add C-SPAN 3 to your programming lineup on channel 996.

In order to bring value to such programming in a high quality digital format, we will also begin the process to relocate C-SPAN 2 to channel 997, as well as all public, educational and governmental ("PEG") channels and group these government affairs programs together to create a new "Public Affairs Neighborhood" of programming located on channels 985-998**. See the attached grid for additional channel changes specific to your area.

All of these Public Affairs Neighborhood channels will continue to be part of our basic tier to which all Charter Cable TV® customers subscribe. Like any channel delivered in a digital format, digital equipment will be needed to view these channels. Your options include a TV that uses CableCard technology**; a TV that has a digital tuner; or you may obtain a digital receiver from Charter. If you have a television set that has a digital TV tuner built in, you will find these channels on your television by opening your television's Menu and using the "Auto Tune" function. For information, call 1-877-958-7160 or visit your local Charter office.

To support this transition, Charter will carry C-SPAN 2 and the existing PEG channels on the old and new channels until March 31, 2010.

Charter is proud to provide our customers with the highest-quality services and broadest range of programming options. As always, if you have any suggestions, please contact me directly at my email address, SteveGM@chartercom.com.

Sincerely,

Stephen R. Trippe
Vice President/General Manager
Charter Communications
SteveGM@chartercom.com

Programmer	OLD Channel	NEW Channel	Areas Affected
Charter Media Channel**	10	10	Centralia, Mt. Vernon, Salem
Charter Media Channel**	99	N/A	Salem

©2009 Charter Communications. Residential customers only. Standard monthly rates apply for Charter Cable TV/Digital Cable, services. Installation, taxes, fees and surcharges are extra. **Digital equipment required to view and charges may apply. Equipment availability and programming line-up may vary. Charter reserves the right to determine the level of service to which this offer applies. Valid service address required. Credit approval, prepayment or major credit card may be required. All services provided are subject to the subscriber agreement which is subject to change. Trademarks belong to their respective owners. Services not available in all areas. Other restrictions may apply. Call for full details.

Attachment D



Public, Educational, and Governmental (PEG) Access Cable Television Channels: Issues for Congress

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October 7, 2011

Congressional Research Service

7-5700

www.crs.gov

R42044

Summary

The environment for public, educational, and governmental (PEG) cable channels is being roiled by public policy and budgetary changes at the federal, state, and local levels and by technological changes in cable networks. More than 100 PEG access centers—which provide community groups and individuals free access to video production facilities and equipment, training, and programming time—have closed since 2005, and many more may close when provisions in recently enacted state laws that eliminate requirements for cable companies to provide funding support take effect. Many PEG access centers, however, continue to have stable funding sources.

When awarding franchises for the use of public rights of way to offer cable television service, many local jurisdictions required the cable companies to set aside some of their channel capacity for PEG use and to provide financial support for those PEG access channels. Those channels are not mandated by federal law. But the Cable Communications Policy Act of 1984 amended the Communications Act to explicitly allow franchising authorities to require cable operators to set aside channel capacity for PEG use and to provide adequate facilities or financial support for those channels. These PEG provisions have been a primary vehicle for fostering in cable systems the long-standing U.S. media policy goal of localism.

Several recent developments are affecting the amount of financial support from cable providers and local governments for the PEG channels. In recent years, 20 states have enacted laws allowing cable systems to obtain statewide franchises. Some of these laws have abrogated or phased out PEG-related provisions in local franchise agreements requiring the franchisees to set aside channels, provide financial support, or provide studio facilities. In addition, the Federal Communications Commission (FCC) has adopted rules that may limit the amount of PEG financial support for non-capital costs that local franchise authorities can require of cable providers. Also, some local jurisdictions that have funded PEG operations are now facing budget deficits that are leading them to reduce or eliminate their PEG funding.

Driven by technological changes, some cable operators have begun to offer PEG channels in a fashion that may reduce consumer access to, and the quality of, those channels, and may raise consumer costs to obtain PEG channels. As traditional cable providers are migrating from analog to digital transmission of programming, some subscribers must obtain set-top boxes to receive PEG programming. AT&T's U-verse service uses a different platform for PEG channels than for commercial channels. It is more difficult for subscribers, especially the visually impaired, to access the PEG channels, and PEG programming cannot be recorded on a DVR, leading some to claim the service does not meet requirements in franchise agreements or in the Communications Act. AT&T responds that it meets all requirements and it is inappropriate to require it to deploy its network inefficiently to meet rules developed for traditional cable architecture.

The Community Access Preservation (CAP) Act (H.R. 1746) would allow local jurisdictions in states that pass state franchise laws to require cable companies to provide PEG support equal to the greater of the amount required under the state law, the historical support required prior to enactment of the state law, or 2% of the gross cable revenues of the cable operator. That PEG support would not be included in the statutory cap on franchise fees of 5% of revenues. The bill would prohibit cable operators from charging subscribers for set-top boxes needed to receive PEG channels that are migrated from analog to digital tiers. The cable industry opposes the bill, claiming it would raise costs and rates and place cable operators at a competitive disadvantage with satellite television operators.

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Overview: The Environment Today

When awarding franchises for the use of public rights of way to offer cable television service, many local jurisdictions have required the cable companies to set aside some of their channel capacity for public access, educational, or governmental (collectively, PEG) use¹ and to provide financial support for those PEG access channels. These channels are perhaps best known for carrying local city council meetings, but they generally provide a significantly broader array of governmental, educational, community, religious, and political programming. Today, subscribers to more than 1,500 U.S. cable systems have access to PEG channels.²

PEG channels are not mandated by federal law. But the Cable Communications Policy Act of 1984 (P.L. 98-549) amended the Communications Act to explicitly allow franchising authorities to require cable operators to set aside channel capacity for PEG use and to provide adequate facilities or financial support for those channels.³ These PEG provisions have been a primary vehicle for fostering in cable systems the long-standing U.S. media policy goal of localism.⁴

The environment for PEG channels is being roiled by a number of public policy and budgetary changes at the federal, state, and local level and by technological changes in cable networks. More than 100 PEG access centers—which provide community groups and individuals free access to video production facilities and equipment, training, and programming time—have closed since 2005, and others are threatened by severe funding cuts. Without the programming produced at PEG access centers, PEG channels may not be able to continue operations. At the same time, some subscribers now have greater difficulty accessing PEG programming. Not all PEG access centers and PEG channels are facing this bleak environment, however; many continue to have stable funding sources.

American Community Television, an organization that advocates on behalf of PEG access centers, estimates that the more than 1,500 PEG access centers in the United States manage

¹ Public access channels present video programming and other electronic information produced, directed, and engineered by community organizations and individuals. Educational access channels offer programming provided by school or college employees and students; it typically focuses on distance learning, school activities, and information that the schools and colleges want to distribute beyond their campus boundaries. Governmental access channels provide coverage of public meetings and information from local, state, and regional governments intended for the general public. Governmental channels also may provide, on closed-circuit, training programs for government employees. See “Access Basics,” prepared by The Buske Group, http://buskegroup.com/PEG_Access_Basics.pdf.

² In the chapter on PEG access channels in its July 2011 report, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, <http://www.fcc.gov/infoneedsreport>, the Federal Communications Commission cited (at p. 170) a 1998 survey that reported that 18% of cable systems have public access channels, 15% have educational access channels, and 13% have governmental access channels. Since most cable systems serving the largest U.S. cities are required to make channel capacity available for PEG use, far more than 18% of U.S. households have access to PEG channels. The National Cable & Telecommunications Association reports (at <http://www.ncta.com/Stats/CableSystems.aspx>) that the number of U.S. cable head-ends (systems) has fallen from 11,408 in 1998 to 7,246 in 2010, as cable companies have followed the strategy of trading systems among themselves to create clusters of systems in fewer geographic locations rather than owning many individual systems scattered around the country. In some cases, contiguous systems are then combined and served by a single head-end, thus consolidating the number of systems, but it is unlikely that has resulted in fewer households receiving PEG channels.

³ See sections 611(a), (b), and (c) (47 U.S.C. §531(a), (b), and (c)) and 621(a)(4)(B) (47 U.S.C. §541(a)(4)(B)).

⁴ Title VI of the Communications Act addresses cable communications. The first section of that title (§601) identifies six purposes of the title; one of these is to “establish franchise procedures and standards ... which assure that cable systems are responsive to the needs and interests of the local community” (47 U.S.C. §521(2)).

upwards of 5,000 cable television PEG channels.⁵ Each week these channels carry 20,000 hours of new programs from local governments, schools, health and jobs organizations, social services agencies, and local residents.⁶ Although these estimates are provided by PEG advocates and may be inflated, there is no question that PEG channels provide a very substantial amount of local programming. The PEG channels vastly outnumber the 354 public broadcast television stations, but the audiences for virtually all PEG channels are quite small.⁷ Most PEG access centers have a paid staff of just one or two people, relying heavily on volunteers; one-third have annual budgets (operating and capital) of less than \$100,000.⁸

Reductions in PEG Funding

According to a recent survey,⁹

PEG Access Centers in at least 100 communities across the United States have been closed since 2005.... Hundreds more PEG Access Centers in six states affected by state franchising laws may be forced to close or experience serious threats to financial and in-kind support over the next three years.

These closures appear to be related to three developments that are reducing funding for some PEG access channels.

- In the past few years, 20 states have enacted laws allowing cable systems to obtain statewide franchises.¹⁰ These state laws were motivated by the desire to ease broad geographic market entry into the cable television market by Verizon and AT&T by allowing them to obtain a single statewide franchise rather than having to negotiate many local franchises. To provide incumbent cable systems with competitive parity, many of the laws also allowed the incumbents to obtain statewide franchises or replaced certain local franchise requirements with less stringent statewide requirements. Some of these laws have abrogated or phased out PEG provisions in existing local franchise agreements that required the franchisees to set aside channels, provide financial or in-kind support, or provide studio facilities¹¹—or cable companies have interpreted the laws to allow them to

⁵ See <http://acomunitytv.org>.

⁶ Testimony of Barbara Popovic, executive director of Chicago Access Network Television, on behalf of The Alliance for Community Media and Alliance for Communications Democracy, before the United States House of Representatives Appropriations Committee, Subcommittee on Financial Services and General Government, Hearing on Public, Educational, and Governmental (PEG) Access for Cable Television, September 17, 2008.

⁷ Audience measurement (ratings) data do not exist for PEG stations, in part because the audiences are small and in part because there is no commercial interest willing to bear the costs associated with audience measurement.

⁸ *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Federal Communications Commission, July 2011, p. 170 and fn. 13 and 14, <http://www.fcc.gov/infoneedsreport>.

⁹ “Analysis of Recent PEG Access Center Closures, Funding Cutbacks and Related Threats,” prepared for Alliance for Communications Democracy with support from the Benton Foundation (ACD/Benton Survey), April 8, 2011, p. 2, http://www.theacd.org/uploaded_docs/2011_PEG_Access_study_1.pdf. Although this was not a random survey—it specifically sought input from access centers and channels facing funds cuts or closure—there is no reason to question the accuracy of its list of closures.

¹⁰ These states are Texas, Virginia, Indiana, Kansas, North Carolina, South Carolina, New Jersey, California, Michigan, Missouri, Florida, Iowa, Georgia, Nevada, Ohio, Illinois, Wisconsin, Connecticut, Tennessee, and Louisiana.

¹¹ For a compilation of the relevant provisions in these state franchising laws, see “State Cable Franchise Laws at a Glance, current as of 8/23/2011,” prepared by The Alliance for Community Media, Best Best & Krieger, and (continued...)

reduce or eliminate PEG support. Some of the provisions now being abrogated or phased out required cable operators to provide hook-ups, facilities, or services without charge to schools, fire stations, and other governmental locations;¹² their elimination will force the local jurisdictions to bear the associated costs or reduce services.

- The Federal Communications Commission (FCC) initiated a rulemaking proceeding in the mid-2000s to implement section 621(a)(1) of the Communications Act,¹³ which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. The FCC determined that some local franchise authorities (LFAs) had set overly burdensome requirements for PEG support and concluded that LFAs could require cable systems to provide “satisfactory or sufficient” PEG support but not “significant” support. Section 622(b) of the Communications Act caps the total franchise fees that a local jurisdiction may impose on cable operators at 5% of gross cable revenues,¹⁴ subject to certain exceptions.¹⁵ The FCC concluded that any PEG-related assessment that is not a capital cost must be subtracted from the 5% statutory franchise fee cap,¹⁶ defining capital costs as “those costs incurred in or associated with the construction of PEG access facilities,” but excluding “payments in support of the use of PEG access facilities,” which “are considered franchise fees and are subject to the 5 percent cap.” This limit on how much funding a local franchising authority can require of a cable system was applied to incumbent cable companies as well as to new competitors. PEG supporters claim this interpretation represents a misreading of Congressional intent¹⁷ and has created uncertainty about what constitutes capital costs, reducing PEG-related funding by cable companies.

(...continued)

TeleCommUnity, <http://www.allcommunitymedia.org/wp-content/uploads/2011/08/States-at-a-Glance-Franchise-Rules.pdf>.

¹² See, for example, Matthew Hathaway, “Charter shutting off free cable to area government offices,” *St. Louis Post-Dispatch*, August 17, 2011, http://www.stltoday.com/news/local/metro/article_0028c552-dd0b-56c3-9377-7e88ede541.htm. More generally, see “Assessing the Damage: Survey shows that state video franchise laws bring no rate relief while harming public benefits,” results of a May 2008 online survey conducted by the Alliance for Community Media (ACM Survey), <http://www.cantv.org/keepusconnected/Harm-Survey-Report.pdf>.

¹³ 47 U.S.C. §541(a)(1).

¹⁴ 47 U.S.C. §542(b).

¹⁵ Section 622(g)(2)(B) of the Communications Act (47 U.S.C. §542(g)(2)(B)) explicitly excludes from the 5% cap *all PEG-related assessments* in franchise agreements in effect on October 30, 1984; most agreements in effect on that date have expired but been renewed. Section 622(g)(2)(C) (47 U.S.C. §542(g)(2)(C)) only excludes PEG-related *capital* costs from the 5% fee cap for agreements in effect after that date.

¹⁶ *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, adopted December 20, 2006 and released March 5, 2007 (FCC Cable Franchising Report and Order), ¶ 109, and *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, adopted October 31, 2007 and November 6, 2007, ¶ 11.

¹⁷ See, for example, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Dissenting Statement of Commissioner Jonathan S. Adelstein, stating that the House Report on the legislation explicitly distinguishes between the monetary payments that comprise the franchise fee and the provision of services, facilities, and equipment for PEG channels, institutional networks, or other uses.

- Historically, many jurisdictions imposed a franchise fee of 5% of gross cable revenues on franchisees and then used a portion of those revenues to support PEG operations. But some local jurisdictions that have long provided such support for PEG operations are facing budget shortfalls that are forcing them to reduce their PEG funding.¹⁸ This appears to be happening more frequently in those local jurisdictions that, as a result of state laws, no longer have franchising authority.

According to the ACD/Benton Survey, almost half of the survey respondents providing financial data reported a decrease in funding between 2005 and 2010 and 20% of the respondents that receive in-kind support from their cable operators reported reductions in that support.¹⁹

At the same time, many PEG access centers and channels have not been affected by these changes. Fifty-five percent of the respondents in a PEG access benchmarking study performed in 2010 said their public access funding had increased over the past two years, while 36% said that it had remained the same or gone down.²⁰ Those access centers that receive a fixed percentage of their local cable companies' cable revenues are enjoying increased funding as overall cable revenues continue to increase; others have benefited from funding escalators in their franchise agreements.

Systematic data do not exist on the funding and financial strength of PEG access centers. It appears, however, that while many access centers continue to enjoy stable funding sources, a sizeable portion are facing abrupt and significant funding reductions that may challenge their existence.

Requirements in franchise agreements to provide PEG access channels impose two types of costs on cable systems: the direct costs of providing facilities and/or financial support for PEG centers and the opportunity costs of allocating channels to noncommercial PEG entities when those channels could generate revenues if put to commercial use. Although no data have been collected to estimate how substantial these direct and opportunity costs are, they clearly are not negligible. Cable systems therefore have the incentive to minimize the amount of their system capacity allocated to PEG channels and the level of outlays they must make in support of PEG channels.

Cable service providers subject to the PEG provisions in the Communications Act include traditional cable operators, such as Comcast and Time Warner, as well as landline telecommunications firms that have recently entered the multichannel video programming distribution (MVPD) market, such as AT&T and Verizon. These telecommunications firms, like traditional cable operators, use the public rights of way. AT&T continues to assert that its video service is not a cable service and should not be subject to cable franchise agreements.²¹ On July

¹⁸ According to Sue Buske, a member of the Board of Directors of the Alliance for Community Media, a PEG advocacy organization, a partial list of local jurisdictions in which PEG access operations have been closed or have had their budgets reduced due to cutbacks in franchise fee funding or general fund funding includes: South Bend, Mishawaka, Hammond, Valparaiso, Muncie, Lafayette, Plymouth, Elkhart, and Michigan City, IN; Reno, Sparks, and Washoe County, NV; LaVerne, Oceanside, Millbrae, Vallejo, and Healdsburg, CA; Bainbridge Island and Seattle, WA; Tucson, AZ; Framingham, MA; Reading, PA; Aspen, CO; Batavia, IL; and Atlanta, GA.

¹⁹ ACD/Benton Survey, p. 2.

²⁰ Front Range Consulting, Inc. and Riedel Communications, Inc., *2010 PEG Access Benchmarking Study*, p. 12, <http://acomunitytv.org/act-now/other-resources/>.

²¹ See, for example, *In the Matter of Petition for Declaratory ruling of the City of Lansing, Michigan, on Requirements for a Basic Service Tier and the PEG Channel Capacity Under Sections 543(b)(7), 531(a), and the Commission's* (continued...)

26, 2007, the U.S. District Court for Connecticut found that AT&T's service is a cable service subject to cable franchising and on July 10, 2008, that court confirmed the decision, which had been appealed by AT&T. On March 5, 2010, however, the Second Circuit of the U.S. Court of Appeals vacated the district court decision as moot because, prior to that decision, the Connecticut legislature enacted a new Video Franchise Act that "unambiguously required AT&T to obtain a video franchise before providing video service in the state," thus leaving the federal district court without jurisdiction.²²

Changes in Cable Network Technologies and Architectures

Cable service providers are making significant technological changes to their networks that are changing the way they provide PEG channels to end users. Traditional cable providers are migrating in stages from analog to digital transmission of their programming, so not all programming has yet been shifted to digital transmission. During the transition, operators are offering popular channels in both formats—that is, providing both a digital channel and an analog channel—but the operators prefer not to tie up their network capacity for both digital and analog transmission of less popular programming. Therefore, many cable operators have chosen to provide the lightly viewed PEG channels only on digital tiers that require a subscriber with an analog television set to obtain a set-top box with a digital-to-analog converter for reception.

Some cable operators are providing these set-top boxes to subscribers for free during the digital transition, but others are charging.²³ When operators have taken the latter course, some PEG advocates and local jurisdictions have objected that this places subscribers in the position of having to pay for the set-top box or not receive PEG programming. These parties claim this is inconsistent with the terms of local franchise agreements and the intent of section 623(b)(7)(A)(ii) of the Communications Act²⁴ that cable operators must make a basic tier of programming (including any PEG channels required by the franchise authority) available to all subscribers at a low price. These groups have petitioned the FCC to issue a declaratory ruling that PEG channels must be carried on the basic service tier and treated equally with other basic service tier channels.²⁵ AT&T and others in the cable industry have filed comments opposing

(...continued)

Ancillary Jurisdiction Under Title I; In the Matter of Petition for Declaratory Ruling of Alliance for Community Media, et al., that AT&T's Method of Delivering Public, Educational, and Government Access Channels Over Its U-verse System is Contrary to the Communications Act of 1934, as Amended, and Applicable Commission Rules; In the Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc. et al. CSR-8227, 8126, and 8128, MB Docket No. 09-13, Comments of AT&T Opposing Petitions for Declaratory Ruling, March 9, 2009, p. 2.

²² *Office of Consumer Counsel v. Southern New England Telephone Co.*, No. 09-0116-cv, United States Court of Appeals, Second Circuit, March 5, 2010.

²³ For example, as discussed in greater detail below, in Michigan when Comcast initially migrated its PEG channels from its analog tier to its digital tier, it announced that it would provide each subscribing household one digital set-top box free for one year, but would charge for set-top boxes needed for other television sets in the household and would charge after the first year for the initially free set-top box. Those terms were modified in a settlement agreement with several Michigan jurisdictions that brought suit. Later, as part of obtaining approval from the FCC for its merger with NBC-Universal, Comcast agreed to PEG-related conditions that included (1) not migrating PEG channels to digital delivery until the system has converted to all-digital distribution (that is, until all analog channels are eliminated) or until the governmental entity responsible for the system's PEG operations expressly agrees, whichever comes first; and (2) carrying all PEG channels on its digital starter tier or an equivalent tier that reaches at least 85% of its subscribers.

²⁴ 47 U.S.C. §543(b)(7)(A)(ii).

²⁵ See *In the Matter of Petition for Declaratory Ruling of the City of Lansing, Michigan, on Requirements for a Basic* (continued...)

those petitions.²⁶ To date, the FCC has not issued any declaratory rulings in response to these petitions.

AT&T has introduced its U-verse service, which provides multi-channel video service using Internet Protocol (IP) technology and a network architecture that does not “broadcast” the signals of all the program networks to the end user, but rather allows the subscriber to use a set-top box to “call up” the desired video stream from a single centralized hub in each metropolitan area, where the video file is stored. AT&T says it would be prohibitively expensive to use this architecture for the many PEG access channels in a metropolitan area and therefore has chosen to offer PEG programming in a different fashion that is more akin to the way it handles Internet traffic. It has created a separate platform for PEG, placing the PEG programming for all jurisdictions in a metropolitan area on a single channel (99). PEG viewers must go to channel 99, pull down a menu that identifies each of the local jurisdictions, select the desired jurisdiction to get a menu that identifies all the PEG programming for that jurisdiction, and then select the particular program. In addition to the time required to do this, and the particular difficulty for visually impaired viewers, the programming cannot be recorded on a DVR and picture quality is impaired.

Some PEG advocates and local jurisdictions claim AT&T is offering PEG programming in an inferior and discriminatory fashion that does not meet the requirements of local franchise agreements or the Communications Act. For example, the Alliance for Community Media and other parties filed a petition with the FCC asking it to make a declaratory ruling that, among other things, “AT&T’s systematic discrimination against PEG programming in terms of accessibility, functionality, and signal quality violates Sections 611, 623, and 624(e) of the Communications Act and FCC rules and policies.”²⁷ AT&T responded that U-verse is not a cable service subject to those requirements, but that in any case it meets all those requirements and would be required to deploy its IP network inefficiently in order to meet requirements developed for traditional cable architecture.²⁸ The FCC has not yet issued a ruling on the petition.

PEG access channel requirements do not apply to direct broadcast satellite (DBS) systems (DirecTV and DISH Network). Although DBS providers compete with cable operators in the MVPD market, DBS is a satellite service, not a cable service, does not require the use of public rights of way, and is not subject to cable franchising requirements. By federal law, if a satellite operator chooses to offer its subscribers local broadcast television station signals in a local market it must provide the signals of all full-power broadcast stations in that market, but it need not offer PEG channels, which are cable channels, not broadcast channels.²⁹

(...continued)

Service Tier and the PEG Channel Capacity Under Sections 543(b)(7), 531(a), and the Commission’s Ancillary Jurisdiction Under Title I, MB Docket No. 09-13, City of Lansing Petition for Declaratory Ruling, January 27, 2009, and *In the Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc. et al.*, MB Docket No. 09-13, City of Dearborn Petition for Declaratory Ruling, December 9, 2008.

²⁶ See the Comments of AT&T Opposing Petitions for Declaratory Ruling.

²⁷ *In the Matter of Petition for a Declaratory Ruling that AT&T’s Method of Delivering Public, Educational and Government Access Channels Over Its U-verse System is Contrary to the Communications Act of 1934, as amended, and Applicable Commission Rules*, Petition for Declaratory Ruling of Alliance for Community Media, et al., January 30, 2009.

²⁸ See Comments of AT&T Opposing Petitions for Declaratory Ruling.

²⁹ There likely would be a number of technological and cost challenges associated with providing the PEG channels (continued...)

With the development of the Internet, it is possible to distribute PEG programming online, where it would not consume scarce cable capacity for which there is commercial demand. Indeed, many PEG access centers already distribute their programming online. But Internet access is not universal and therefore relying upon the Internet to replace rather than extend cable distribution of PEG programming might not be consistent with the long-standing public policy goal of fostering localism. Moreover, use of the Internet for distribution does not eliminate the problem of funding PEG program production.

PEG-Related Provisions in the Communications Act

There are four key sections in the Communications Act relating to PEG access channels.

Section 611, which is entitled “Cable Channels for Public, Educational, or Governmental Use,” allows a franchising authority to

- establish requirements in a franchise with respect to the designation or use of channel capacity for PEG use (but only to the extent provided in this section);³⁰
- require that channel capacity be designated for PEG use and to establish rules and procedures for the use of the channel capacity so designated;³¹ and
- enforce any requirement in any franchise regarding the provision or use of such channel capacity. Such enforcement includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to PEG use of channel capacity, whether or not required by the franchising authority.³²

Section 621, entitled “General Franchise Requirements,” includes the instruction that, in awarding a franchise, the franchising authority may require adequate assurance that the cable operator will provide adequate PEG access channel capacity, facilities, or financial support.³³

Section 622, entitled “Franchise Fees,” sets a cap on the franchise fee that a franchising authority may charge at 5% of the cable operator’s gross revenues,³⁴ but explicitly states that the term “franchise fee” does not include (1) in the case of a franchise in effect in October 1984, payments that are required to be made by the cable operator during the terms of such franchise for, or in support of the use of, PEG access facilities, or (2) in the case of any franchise granted subsequently, capital costs that are required by the franchise to be incurred by the cable operator for PEG access channels.³⁵ Thus, franchise authorities may impose certain PEG costs on a cable provider over and above the 5% franchise fee limit.

(...continued)

over DBS. For example, in many cases there are many jurisdiction-specific PEG channels in a single local market and the bandwidth needed to uplink and downlink all those channels likely would tax the capacity of satellite systems.

³⁰ Section 611(a), 47 U.S.C. §531(a).

³¹ Section 611(b), 47 U.S.C. §531(b).

³² Section 611(c), 47 U.S.C. §531(c).

³³ Section 621(a)(4)(B), 47 U.S.C. §541(a)(4)(B).

³⁴ Section 622(b), 47 U.S.C. §542(b).

³⁵ Sections 622(g)(2)(B) and (C), 47 U.S.C. §542(g)(2) (B) and (C).

Section 623(b), entitled “Establishment of Basic Service Tier Rate Regulations,” includes the instruction that each cable operator provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. That basic service tier—which is subject to price regulation by the franchising authority if the FCC has not made the determination that the cable provider faces effective competition—must include any PEG access programming required by the franchise of the cable system to be provided to subscribers.³⁶

Provisions in H.R. 1746, the Community Access Preservation (CAP) Act

The Community Access Preservation (CAP) Act, H.R. 1746, introduced by Representatives Baldwin and LaTourette on May 5, 2011, seeks to mitigate the impact of provisions in state franchising laws that may reduce resources and support for PEG access centers and also to sustain consumer access to PEG channels. Key provisions include:

- If a state enacts a law affecting the number of channels a franchising authority may require a cable operator to designate for PEG use, a local government subdivision may require the cable company to provide the greater of the number of channels the operator was providing in that subdivision prior to enactment of the state law or up to three channels.³⁷
- If a state enacts a law affecting cable system franchising requirements relating to support for PEG use of a cable system, a cable operator owes to any local government subdivision in which the operator provides cable service an amount to be determined by the subdivision but not to exceed the greatest of: (a) the amount of support provided in the last calendar year ending before the effective date of the state legislation; (b) the average annual amount of support provided over the term of the franchise under which the cable operator was operating before the effective date of the state law; (c) the amount of support that the cable operator is required to provide to the subdivision under the state law; or (d) an amount of support equal to 2% of the gross revenues of the cable operator from the operation of the cable system to provide cable services in the subdivision. The forms of support for PEG use include all cash payments, in-kind support, and free services that the operator provides to the subdivision for PEG use of the cable system. This amount will be adjusted for inflation using the Gross National Product Price Index.³⁸ Support provided to any subdivision must be dedicated to PEG use of channel capacity.

³⁶ Section 623(b)(7)(A)(ii), 47 U.S.C. §543(b)(7)(A)(ii).

³⁷ A local government subdivision is defined as follows: (1) a franchising authority that derives its power to grant a franchise from state or local law, except that (2) in a state that adopts a state law with PEG franchising requirements, an entity that was considered a franchising authority deriving its power to grant a franchise from state or local law prior to the effective date of the state law.

³⁸ The Gross National Product Price Index (GNPPI) measures changes in the prices of all final goods and services produced by an economy. In comparison, the Consumer Price Index only measures the price changes for a fixed basket of goods and services purchased directly by consumers. The GNPPI therefore provides a broader picture of inflation in the economy. The GNPPI is constructed by the Bureau of Economic Analysis in the Department of Commerce.

- The definition of “franchise fee” in section 602(g)(2)(A) and (B) of the Communications Act³⁹ is modified to explicitly exclude *for any cable franchise*, not just for those franchises in effect on October 30, 1984, payments that are required by the franchise to be made by the cable operator for, or in support of the use of, PEG access facilities. Since franchise fees are subject to a statutory cap of 5% of gross cable revenues, this exclusion would allow local jurisdictions to impose PEG-related fees in addition to a 5% franchise fee.
- The cable operator must carry the PEG signals from their point of origin to subscribers without material degradation and without altering or removing content or data. This provision would prohibit the cable operator from eliminating closed captioning or lessening other capabilities.
- The cable operator must provide the PEG signals to, and make them viewable by, every subscriber, without additional service or equipment charge. This would prohibit a cable operator from migrating PEG channels to a digital tier while continuing to offer commercial channels on an analog tier and then charging analog customers for a set-top box to obtain the PEG channels.
- The cable operator must provide to the local government subdivision, free of charge, any transmission services and the use of transmission facilities that are necessary to carry the PEG signals to end users. Some cable operators have begun to charge local jurisdictions for such transmission service and facilities; this provision is intended to end that practice.
- Local government subdivisions, as well as states, are given the authority to enforce the provisions outlined above.
- A local government subdivision may not impose additional PEG-related requirements on a cable system unless that subdivision is the franchising authority at the time the requirements are imposed or the state law authorizes the subdivision to impose such requirements.
- The FCC must submit within 180 days of enactment of the CAP Act a report containing an analysis of the impact of state franchising laws on PEG use of cable systems; an analysis of the impact of the conversion from analog to digital transmission technologies on PEG use of cable systems; recommendations for changes to this section of law required to preserve and advance localism and PEG use of advanced communications systems, including broadband systems; and recommendations for changes to this section of law, after cable systems have converted to a fully digital delivery system, relating to requirements for the accessibility of PEG channel capacity and the placement of such channel capacity, except that the recommendations may not include allowing cable operators to impose additional charges on subscribers with respect to the quality, availability, functionality, or placement of that channel capacity.
- The definition of cable service in section 602(6) of the Communications Act is modified by inserting the following words in *italics*: “the term “cable service” means, *regardless of the technology or transmission protocol used in the provision of service*, (A) the one-way transmission to subscribers of (i) video

³⁹ 47 U.S.C. §542(g)(2)(A) and (B).

programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.” This is intended to include AT&T’s U-verse service in the definition of cable service.

As will be explained below in the discussion of specific issues, the National Cable & Telecommunications Association (NCTA) opposes the bill. PEG advocates support the bill.

PEG-Related Policy Issues

It is difficult to quantify the impact of the various public policy, budgetary, and technological changes on the PEG environment because limited systematic data exist relating to PEG channels.

- Comprehensive data are not available on the portion of PEG financial support for capital and operating costs that currently comes from fees on cable companies, in-kind contributions from cable companies, payments from the general revenues of local jurisdictions, private contributions, foundation grants, or other sources—though the cable companies have generally been the primary funders and local jurisdictions the second largest funders.
- In its rulemaking proceeding, the FCC made no attempt to measure the extent to which existing cable franchisees or franchise applicants were required to pay PEG operating expenses or offer in-kind services; it cited limited anecdotal evidence of a handful of local jurisdictions seeking to impose onerous requirements.
- Neither the FCC nor stakeholders (cable companies or PEG advocates) have attempted to construct estimates of the likely scale of cutbacks in funding from cable companies as state laws take effect and from local jurisdictions as tight budgetary conditions prevail. As a result, it is difficult to project the aggregate impact of the funding cuts that PEG access centers are experiencing or are likely to experience, although it is possible to identify cases in which such cuts have resulted in closings and it may be possible to use these to make forecasts of the likely impact of state law provisions that will take place next year.
- Neither the cable industry nor the FCC has quantified the opportunity costs associated with setting aside channels for PEG use. Cable companies would receive some revenues from commercial use of those channels, but given that most cable networks offer hundreds of channels and that the marginal channels attract very small audiences, the opportunity costs associated with PEG channels, though not negligible, are likely to be small.⁴⁰ Consumer welfare losses also are likely to be small since the foregone commercial channels would attract few viewers. Although it is difficult to measure the intensity of demand for services for which there is no price, some viewers appear to attach a high value to PEG programming. (Indeed, these viewers might choose cable service over satellite service precisely because they cannot receive PEG channels over satellite.)

⁴⁰ As will be discussed below, AT&T claims that given its network technology and architecture, there are very high network costs associated with providing PEG service that do not exist for more traditional cable architectures.

Moreover, Congress has long viewed local programming as having public benefits that should be fostered.

There is evidence, however, that the various public policy and budgetary changes, especially the elimination of requirements for cable companies to support PEG channels, are threatening the financial viability of PEG access centers in the affected states.

State Franchising Laws

Section 602(10) of the Communications Act defines “franchising authority” to mean any governmental entity empowered by federal, state, or local law to grant a franchise.⁴¹ As recently as five years ago, most states left cable franchising authority entirely to local jurisdictions (local franchising authorities or LFAs). About 10 states had some role in the franchising process, but many of these just reviewed locally negotiated agreements.

Between 2006 and 2009, 20 states—Texas, Virginia, Indiana, Kansas, North Carolina, South Carolina, New Jersey, California, Michigan, Missouri, Florida, Iowa, Georgia, Nevada, Ohio, Illinois, Wisconsin, Connecticut, Tennessee, and Louisiana—enacted laws establishing statewide cable franchises and legislation was introduced in 2011 in two additional states, Massachusetts and Idaho.⁴² These state laws were motivated by the desire to ease broad geographic market entry by Verizon, AT&T, and others by allowing them to obtain a single statewide franchise rather than having to negotiate many local franchises. To provide incumbent cable systems with competitive parity, many of the laws also allow incumbents to obtain statewide franchises upon the expiration of their local franchise agreements or to replace certain local franchise requirements with less stringent statewide requirements.

There are great differences among the state laws and their impact on the requirements for cable company provision of PEG channel capacity and PEG financial and technical support varies significantly.⁴³ Most significant from the PEG perspective, a number of state laws in effect have

⁴¹ 47 U.S.C. §522(10).

⁴² For a detailed description of state cable franchise laws, see “State Cable Franchise Laws at a Glance, current as of 8/23/2011,” prepared by The Alliance for Community Media, Best Best & Krieger, and TeleCommUnity, <http://www.allcommunitymedia.org/wp-content/uploads/2011/08/States-at-a-Glance-Franchise-Rules.pdf>.

⁴³ Some of the state laws set specific terms, conditions, and maximum or minimum requirements that are applicable in all the local jurisdictions in the state served by the franchise applicant. Others explicitly require the franchise applicant to match the requirements imposed on the incumbent cable provider in each local jurisdiction at the time the law was enacted, that is, the franchise requirements vary from local jurisdiction to local jurisdiction. Some laws, which would allow incumbent cable franchisees to apply for a state franchise upon the completion of their current local franchises, set statewide requirements that would apply to both incumbent and new franchisees when the incumbent’s existing local franchise expires, but require both to follow the existing local franchise requirements in the interim. Yet others allow both incumbents and new entrants to immediately obtain statewide franchises subject to statewide requirements, in effect annulling some or all of the terms of the incumbent cable operators’ existing local franchise agreements. As a result, the impact of these state laws on the requirements for the provision of PEG channel capacity and PEG financial and technical support varies significantly from state to state. For example, the state franchising laws in Texas, Virginia, Indiana, California, Michigan, Florida, Nevada, Ohio, Illinois, and Wisconsin require new entrants that seek to offer service in multiple local jurisdictions in a state to match the specific PEG channel capacity requirements currently imposed on the incumbent cable providers by the local franchising authorities in each jurisdiction (while setting certain minimum levels for situations in which there is no incumbent provider). In contrast, the state franchising laws in Kansas, North Carolina, South Carolina, New Jersey, Missouri, Iowa, and Georgia set statewide maximum or minimum PEG channel capacity requirements that are unrelated to the requirements in the existing franchise agreements of incumbent cable providers. The state franchising laws have even greater variation with respect to requirements for the (continued...)

sunset provisions for PEG support for both incumbent cable companies and new entrants, as shown in **Table 1**.

Table 1. States with Laws that Eliminate PEG Support Requirements

State	Impact on Incumbent Cable Operators	Impact on New Cable Operators
Nevada	Support requirements end upon expiration of the incumbent's local franchise agreement	No PEG support requirements
Kansas	Support requirements end upon expiration of the incumbent's local franchise agreement	No PEG support requirements
Missouri	Support requirements end upon expiration of the incumbent's local franchise agreement	No PEG support requirements
South Carolina	Support requirements end upon expiration of the incumbent's local franchise agreement	No PEG support requirements
Iowa	Support requirements end upon expiration of the incumbent's local franchise agreement	Support requirements end upon expiration of the incumbent's local franchise agreement
Wisconsin	Support requirements ended in the first half of 2011	Support requirements ended in the first half of 2011
Ohio	Support requirements end upon the expiration or termination of the incumbent's local franchise agreement or January 1, 2012, whichever is earlier	Support requirements end upon the expiration or termination of the incumbent's local franchise agreement or January 1, 2012, whichever is earlier
Georgia	Support requirements end upon the expiration of the incumbent's local franchise agreement or July 1, 2012, whichever is earlier	Support requirements end upon the expiration of the incumbent's local franchise agreement or July 1, 2012, whichever is earlier
Florida	Support requirements end upon the expiration of the incumbent's local franchise agreement or July 1, 2012, whichever is earlier	Support requirements end upon the expiration of the incumbent's local franchise agreement or July 1, 2012, whichever is earlier
New Jersey	Support requirements have been eliminated except that statewide franchise holders must provide equipment and training	Support requirements have been eliminated except that statewide franchise holders must provide equipment and training

Source: Compiled by CRS from "State Cable Franchise Laws at a Glance, current as of 8/23/2011," prepared by The Alliance for Community Media, Best Best & Krieger, and TeleCommUnity, at <http://www.allcommunitymedia.org/wp-content/uploads/2011/08/States-at-a-Glance-Franchise-Rules.pdf>, and other sources.

Other state laws set caps on, but do not eliminate, the PEG support requirements that can be imposed on cable operators. For example, the Texas law sets a cap of 1% of gross cable revenues and the Virginia law sets a cap of 1.5% of gross cable revenues.

(...continued)

state franchisee to provide PEG financial support. Some state laws (for example, Texas, Indiana, Michigan, Florida, Iowa, Georgia, and Ohio) require new entrants that seek to offer service in multiple local jurisdictions to provide the same level of support as is currently imposed on the incumbent cable providers by the local franchising authorities in each of those local jurisdictions. Others (for example, Virginia, California, and Illinois) set specific statewide minimum or maximum levels of PEG support, in terms of a percentage of revenues. Yet others (for example, Kansas, South Carolina, Missouri, and Nevada) do not require the new entrants to provide any PEG support.

Sometimes a state law does not end PEG financial support requirements, but eliminates a particular type of support that PEG access centers have heavily relied upon for their operations. For example, in California, there is a process for local jurisdictions to continue to require cable systems to pay a PEG fee of up to 1% of the franchisee's gross revenues, but those jurisdictions cannot require the franchisee to provide PEG studios, institutional networks, or other non-cash support. PEG advocates claim that Time Warner, Charter, and Comcast have discontinued providing studios in a number of communities in California and as a result 51 communities have closed access centers.⁴⁴ Similarly, based on state laws that affected PEG requirements, some cable operators that were operating PEG channels in Indiana and Illinois have closed their PEG access centers, on as little as 30 days' notice.⁴⁵

Some states laws have placed minimum programming requirements on PEG channels even as they have eliminated or set caps on cable company PEG support requirements.⁴⁶ For example, in Georgia, Texas, and Michigan, PEG channels are required to provide at least eight hours of non-repeat programming content daily, but Georgia has eliminated PEG support requirements and both Texas and Michigan have capped support requirements. In Texas, Time Warner stopped airing San Antonio Public Access because the channel could no longer meet the 8-hour non-repeat daily programming requirement.⁴⁷

More broadly, LFAs and PEG advocates claim that the new laws, as interpreted by new entrants and incumbent cable companies, have resulted in limitations on the PEG fees that localities can impose on franchisees, the elimination of free access to video equipment and television studio space previously provided to PEG programmers by franchisees, the elimination of cable company staff was previously provided to operate the access centers where PEG programming is produced, degradation of PEG signal quality rendering it no longer comparable to that of commercial channels, and inferior channel placement for PEG channels.⁴⁸ As a result, some PEG advocates and local governments claim that statewide requirements fail to meet the needs of their local communities. They say this is of particular concern because there is wide variation among communities regarding what PEG programming should be made available and how it should be delivered.

Systematic data are not available on how much PEG support—in cash, facilities, equipment, services, personnel, etc.—has been reduced as a result of the state laws—and how much

⁴⁴ According to the ACD/Benton study, Charter PEG access centers have been closed in Glendale, Long Beach, Los Angeles, and Malibu; Comcast PEG access centers have been closed in Alameda County, Albany, Ashland, Castro Valley, Cherryland, Fremont, El Cerrito, Hayward, Kensington, Richmond, San Leandro, Dan Lorenzo, San Pablo, Newark, and Union City; and Time Warner PEG access centers have been closed in Avocado Heights, Baldwin Park, Carlsbad, Carson, City of Industry, Compton, Costa Mesa, El Segundo, Fountain Valley, Fullerton, Garden Grove, Gardena, Hacienda Heights, Hawthorne, Huntington Beach, Lawndale, La Puente, Los Alamitos, Los Angeles, North Whittier, Ojai, Oxnard, Placentia, Puente Hills, Santa Ana, South Whittier, Stanton, Tustin, Valinda, and Westminster.

⁴⁵ See, American Community Television, "For many states, time is running out ...," <http://www.acommunitytv.org/actnow/troubleinthestates.html>.

⁴⁶ *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Federal Communications Commission, July 2011, p. 173 and fn. 63, <http://www.fcc.gov/infoneedsreport>.

⁴⁷ One criticism of some PEG access centers is that they rely too heavily on studio production of their programming and fail to exploit opportunities for field production, such as local high sports coverage, that could be used to expand their original programming. See *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Federal Communications Commission, July 2011, p. 177, <http://www.fcc.gov/infoneedsreport>.

⁴⁸ See, for example, Josh Goodman, "Unscripted Ending: The Picture Gets Blurry for Public Access Television," *governing.com*, January 31, 2008, available at <http://www.governing.com/topics/technology/unscripted-ending.html>.

additional reduction will occur as local franchise agreements expire and as the 2012 sunset dates in various state laws are reached. But these state laws clearly have and will continue to have very major impacts on PEG support. It is unlikely that alternative sources, such as private donations and foundation grants, will be able to generate enough funds in the near term to replace the loss in cable company support,⁴⁹ and thus some state laws may potentially have an existential impact on PEG access centers and channels.

As noted above, two provisions in the CAP Act are intended to explicitly address the impact of the state bills. One provides that, if a state limits the number of channels a franchising authority may require a cable operator to designate for PEG use, a local government subdivision may require a cable company to provide the greater of the number of channels the operator was providing in that subdivision prior to enactment of the state law or up to three channels. The other provision would entitle local governments to require a cable operator to provide PEG support even if a state enacts a law eliminating or restricting such requirements. The provision would set a cap on the amount that could be required⁵⁰ and would require that those funds be dedicated to PEG use of channel capacity.⁵¹

The cable industry opposes the provisions in the CAP Act that would allow local jurisdictions to impose PEG requirements beyond those set under state law or in statewide franchise agreements. NCTA claims the CAP Act would increase cable company costs and lead to higher cable rates, and that since these requirements do not apply to satellite operators the cable companies would be placed at a competitive disadvantage.⁵² It also states that the CAP Act would allow a local government subdivision to “trump the decisions made by the state franchising authority.” NCTA incorrectly claims, however, that the CAP Act would allow local franchising authorities to impose “unlimited PEG-related costs.”⁵³

FCC Rulings Affecting PEG Funding

In 2007, the FCC adopted rules and provided guidance that set restrictions on the process and requirements that local franchising authorities may employ when considering franchise applications from potential new cable service providers (such as telephone companies) and

⁴⁹ For example, in its July 2011 report, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, the Federal Communications Commission found (at p. 173 and fn. 62) that because PEG access centers are largely volunteer-run they often lack the stable leadership and staffing that media funders and foundations need to be able to construct an ongoing partnership (<http://www.fcc.gov/infoneedsreport>).

⁵⁰ The cap is the greatest of: (a) the amount of support provided in the last calendar year ending before the effective date of the state legislation; (b) the average annual amount of support provided over the term of the franchise under which the cable operator was operating before the effective date of the state law; (c) the amount of support that the cable operator is required to provide to the subdivision under the state law; or (d) an amount of support equal to 2% of the gross revenues of the cable operator from the operation of the cable system to provide cable services in the subdivision. The forms of support for PEG use include all cash payments, in-kind support, and free services that the operator provides to the subdivision for PEG use of the cable system. This amount will be adjusted for inflation using the Gross National Product Price Index. Support provided to any subdivision must be dedicated to PEG use of channel capacity.

⁵¹ The CAP Act also instructs the FCC to perform and submit to Congress an analysis of the impact of the enactment of state video service franchising laws since 2005 on PEG use of cable systems.

⁵² “The Community Access Preservation Act (“CAP Act”) Is Bad for Consumers, Video Competition, and Local Municipalities,” National Cable & Telecommunications Association release, May 2011, <http://www.ncta.com/DocumentBinary.aspx?id=974>.

⁵³ *Ibid.*

incumbents.⁵⁴ The FCC based its actions on Section 621(a)(1) of the Communications Act,⁵⁵ which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. The stated intent of the orders was to foster the ability of competitors to gain entry into video service markets and to enhance broadband development. The FCC argued that, under the current rules, competitors attempting to enter new markets faced unreasonable regulatory obstacles.

In reaching its conclusions and constructing the specific rules constraining LFA requirements, the FCC admitted that for some of the allegedly restrictive requirements “few parties provided specific details.”⁵⁶ It referred to only a single incident to support its conclusion that disputes involving LFA-mandated contributions in support of PEG services and equipment were impeding video deployment and may have been leading to unreasonable refusal to award competitive franchises.⁵⁷ It relied on statutory construction, rather than empirical evidence, when concluding that “adequate PEG access channel capacity, facilities, and financial support” means “satisfactory or sufficient” rather than “significant” support,⁵⁸ and gives LFAs the freedom to establish their own PEG requirements “provided that the non-capital costs of such requirements are offset from the cable operator’s franchise fee payments.”⁵⁹ That is, any PEG-related assessment imposed on the cable operator that is not a capital cost must be subtracted from the 5% fee cap, rather than imposed over and above the 5% fee. In its decision upholding the FCC’s First Report and Order, the Sixth Circuit Court of Appeals found, based on the legislative history of the Cable Act, that costs relating to PEG equipment should be considered capital costs as long as they were incurred in or associated with the construction of PEG access facilities.⁶⁰

Since section 622(g)(2)(C)⁶¹ of the Communications Act only excludes PEG-related *capital* costs from the 5% fee cap for agreements in effect after October 30, 1984, the FCC’s reliance on statutory construction seems straight-forward. But PEG advocates and the two FCC commissioners who dissented from the orders argue that the 1984 Cable Act permits a broader interpretation of what may be required from franchisees over and above the 5% franchise fee.⁶² They point to legislative history, including the House report accompanying the Cable Act, which states that the franchise fee does not include “any franchise requirements for the provision of services, facilities or equipment.”⁶³ They claim that the reference to “services” suggests that cable

⁵⁴ *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, adopted December 20, 2006 and released March 5, 2007 (FCC Cable Franchising Report and Order), and *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, adopted October 31, 2007 and November 6, 2007. The orders did not address the processes and requirements of state franchising authorities.

⁵⁵ 47 U.S.C. §541(a)(1).

⁵⁶ FCC Cable Franchising Order, ¶ 105.

⁵⁷ *Ibid.*, ¶ 109 and fn. 361.

⁵⁸ *Ibid.*, ¶ 112.

⁵⁹ *Ibid.*, ¶ 113.

⁶⁰ *Alliance for Community Media, et al. v FCC*, No. 07-3391, 6th Cir. June 27, 2008.

⁶¹ 47 U.S.C. §542(g)(2)(C).

⁶² See, for example, “Dissenting Statement of Commissioner Jonathan S. Adelstein,” amended to the FCC Cable Franchise Report and Order, p. 105.

⁶³ H.Rept. 98-934, p. 65.

franchisees can be required to pay for non-capital PEG-related franchise requirements over and above a 5% franchise fee.

Since the Communications Act does not define capital costs or service costs, PEG advocates and LFAs claim they are left with a large degree of uncertainty about what assessments LFAs may impose on cable franchisees over and above the franchise fee. Historically, many franchise agreements have required cable franchisees to pay for non-capital PEG-related costs, including salaries, training, travel expenses, rent, and some maintenance expenses. Going forward, cable franchisees that are required to pay a 5% franchise fee probably will be able to deduct these PEG costs from the franchise fees they pay LFAs.

It is difficult to measure the impact that the FCC rules have had on PEG funding and on the financial viability of PEG access centers because neither the FCC, nor the PEG community, nor the cable industry has collected data on the levels and stability of PEG funding sources that might shed light on the impact, if any, of the FCC rules. For example, how common had it been for LFAs to require cable franchisees to make payments, over and above the 5% franchise fee, for PEG operations (as opposed to PEG capital costs)? In those cases, what are the realistic alternative funding options available for operating costs? To what extent, if at all, are private donations and foundation grants feasible options? If these options might be feasible in the long-run, but not short-run, how would PEG access centers stay afloat during the interim period?

The CAP Act would remove the distinction between capital and non-capital cost funding requirements and overrule the funding limitations in the FCC rules, setting higher caps on the amount of PEG funding a local jurisdiction could require. It would explicitly allow a local jurisdiction to continue to require a cable operator to provide PEG support, over and above any mandated franchise fee, up to the limits set in the bill.

NCTA opposes these CAP Act provisions overruling the FCC rules, claiming they would increase cable company costs and thus put upward pressure on cable rates and would place cable companies at a competitive disadvantage with satellite operators, which do not have PEG requirements.⁶⁴

The Transition from Analog to Digital Cable Channels and PEG Channel Placement

Cable systems can transmit as many as six standard-definition digital signals (or one high-definition digital signal) over the same amount of bandwidth as is needed to transmit a single standard-definition analog signal. As a result, cable operators are migrating their programming from analog signal transmission to digital signal transmission in order to free up bandwidth for high-definition and video-on-demand services.

To receive programming transmitted digitally, subscribers must have either a digital television set (rather than an analog set) or a set-top box capable of converting digital signals to analog signals. A separate set-top box is required for each analog television set. Over time, more and more

⁶⁴ See “The Community Access Preservation Act (“CAP Act”) Is Bad for Consumers, Video Competition, and Local Municipalities,” National Cable & Telecommunications Association release, May 2011, <http://www.ncta.com/DocumentBinary.aspx?id=974>.

households will purchase digital television sets, motivated by the desire to receive the superior quality digital (and, especially, high-definition) signals. Recognizing the desirability of digital signals, cable operators charge more for a digital service tier than for an analog service tier.

Today, most households have at least one digital television,⁶⁵ already subscribe to digital cable service,⁶⁶ or have a set-top box capable of converting digital signals to analog. But many households continue to receive analog cable service without the need for a set-top box or do not have a set-top box for each television set. The transition to digital cable transmission will require these households to replace their analog sets with digital sets or to obtain set-top boxes.

The traditional cable providers are migrating from analog to digital transmission of their programming, but they are making this shift in stages, so that not all programming has yet been shifted to digital transmission. During the transition, operators are offering popular channels in both formats—that is, providing the programming on both a digital channel and an analog channel—but the operators prefer not to tie up their network capacity for both digital and analog transmission of less popular programming, and therefore many have chosen to provide the lightly viewed PEG channels only on digital tiers that require a set-top box with a digital tuner for reception. Cable companies operating in local jurisdictions with a large number of PEG channels may have a particularly strong incentive to move their PEG channels to a digital tier to save on bandwidth.

In some cases, the transition from analog to digital cable service will be affected by the terms of the existing local franchise agreements. Many existing agreements require the cable provider to continue to make *basic* analog cable service—primarily the retransmitted local broadcast station signals and the PEG channels—available to its subscribers even if some or all of those signals have been digitized. The cable provider cannot require its subscribers to purchase a digital service tier in order to receive those broadcast and PEG channels and must make set-top boxes available if those channels have been digitized. However, it may be less clear whether the cable company can charge for the set-top boxes. Thus, in most localities, if a cable provider were to digitize its PEG channels, it could not simply place those channels on a digital service tier and require subscribers to purchase that tier, but it might be able to charge for the set-top boxes required if a subscriber were to continue to purchase an analog tier. As existing local franchise agreements expire, new agreements are unlikely to include provisions requiring that basic service be available in analog format.

The transition from analog to digital cable transmission has perhaps been most visible in Michigan. Comcast announced in Michigan in 2007 that it would digitize all the PEG channels on its cable systems and move them to channels in the 900-series. It offered its customers one free set-top box per household for the first year, after which the normal \$4.20 per month leasing fees would apply; those fees would apply immediately for additional set-top boxes.⁶⁷ This move was characterized by Comcast as part of its overall transition from analog service to digital service and made necessary by the capacity demands created by the relatively large number of PEG

⁶⁵ The Consumer Electronics Association estimates that 88% of U.S. households own at least one digital television. See “Mobile Connected Device Sales Bolster Overall 2011 CE Industry Forecast, According to CEA Semi-Annual Report,” CEA Press Release, July 18, 2011, http://www.cea.org/Press/CurrentNews/press_release_detail.asp?id=12121.

⁶⁶ NCTA reports that as of June 2011 77.1% of basic video customers in the United States subscribe to digital cable service. See “Industry Data,” <http://www.ncta.com/Statistics/asp>.

⁶⁷ See, for example, Ted Hearn, “U.S. Judge Blocks Comcast’s PEG Move,” *Multichannel News*, January 15, 2008.

channels in some Michigan communities. Many other cable companies have followed Comcast's lead. For example, Bright House Networks has shifted the PEG channels on its Florida cable systems to digital and Charter Communications announced that it would digitize its PEG channels in Wisconsin and in Reno, NV, and move them to channels in the 200- or 900-series.⁶⁸ Time Warner has taken similar steps in Texas.

The city of Dearborn and Meridian and Bloomfield Townships filed a lawsuit in federal court in Detroit to block Comcast's PEG channel shift, arguing that Comcast planned the change without consulting the communities, in violation of state and federal law, and that up to 400,000 subscribers statewide who could not afford to pay for a converter box would lose access to community news.⁶⁹ The suit also charged that the communities would lose a vital way of communicating with residents. At the same time, the city of Warren filed a Michigan state lawsuit in Macomb County Circuit Court to block the shift.⁷⁰ Both courts placed temporary restraining orders on Comcast's move, barring Comcast from moving the PEG channels from their current location or from converting them to digital without court permission.

Comcast filed a motion to dismiss the federal suit, arguing that the ability of local agreements to dictate where it places PEG channels was preempted by the 2006 Michigan state video franchising law and claiming the law freed it to change channel assignments for any programming on its systems without consulting with programming providers.⁷¹ It claimed federal law does not apply to the channel assignments for non-broadcast cable networks, so the provisions of the state law prevail. It argued that the PEG channel shift would free low-channel capacity needed to deliver Internet services and for high-definition digital broadcast television signals. Comcast also stated that more than two-thirds of its 1.3 million Michigan customers already have digital basic service, giving them access to the 900-series channels.

Comcast's action in Michigan prompted a January 29, 2008 oversight hearing by the House Energy and Commerce Subcommittee on Telecommunications and the Internet. At the hearing, David Cohen, executive vice president of Comcast, apologized for the way in which the matter was handled in Dearborn and pledged that his company would work with local franchising authorities, but claimed that Comcast acted within the law when moving the PEG channels to digital.⁷² Several Representatives, including then-committee chairman John Dingell, voiced concerns that the quality and availability of PEG channels not be negatively affected by cable's transition from analog to digital service.⁷³ Some critics of the Comcast plan also claim that it fails

⁶⁸ See Linda Haugsted, "PEGs Push Back on Channel Slamming," *Multichannel News*, August 25, 2008.

⁶⁹ *City of Dearborn, et al., v. Comcast of Michigan III, Inc., et al.*, Case No. 08-10156, United States District Court, E.D. Michigan, Southern Division. See, also, David Ashenfelter, "Comcast channel changes on hold: Court steps in amid public access concerns," *Detroit Free Press*, January 15, 2008, and Ted Hearn, "U.S. Judge Blocks Comcast's PEG Move," *Multichannel News*, January 15, 2008.

⁷⁰ See Herb Kirchhoff, "U.S., Michigan Courts Block Comcast Plan to Move Public Access Channels," *Communications Daily*, January 16, 2008.

⁷¹ *Ibid.*

⁷² *Public, Educational, and Governmental (PEG) Services in the Digital Age, Hearing Before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives*, Statement of David L. Cohen, Vice President, Comcast Corporation, January 29, 2008, <https://house.resource.org/110/org.c-span.203829-1.raw.txt>. See, also, Cheryl Bolen, "Markey to Interject in FCC Re-Auction if Spectrum Does Not Meet Reserve Price," *BNA Daily Report for Executives*, January 30, 2008, and John Eggerton, "Comcast Defends Michigan PEG-Channel Capacity," *Broadcasting & Cable*, January 29, 2008.

⁷³ See, for example, "Statement of Chairman Dingell at the Subcommittee on Telecommunications and the Internet Hearing Entitled, 'Public Education, and Governmental (PEG) Services in the Digital TV Age.'" January 29, 2008, (continued...)

to address the needs of schools that use PEG programming for educational purposes. Many schools have a television in each classroom, and those schools would have had to rent a converter box for each classroom.

On October 3, 2008, the U.S. District Court released an order granting in part and denying in part Comcast's motion to dismiss.⁷⁴ Most notably, the order found that:

- Federal law preempts state law as it pertains to PEG channel requirements. Thus plaintiffs have a right to sue in federal court.
- Plaintiffs do not have a cause of action under section 531(e) of the Communications Act,⁷⁵ which prohibits cable operators from exercising any editorial control over any PEG use of channel capacity.
- The FCC, rather than the court, has special competence to resolve questions regarding the requirements under section 543(b)(7) of the Communications Act⁷⁶ relating to the components of the basic tier subject to rate regulation.

The court therefore referred six questions to the FCC and stayed the plaintiffs' claim relating to section 543(b)(7) pending a ruling from the FCC. Those questions are:

- When cable operators shift costs to consumers, can a locality act to prevent an "evasion" of the duty to provide service at reasonable rates?
- Does the requirement to provide PEG channels on the basic service tier apply in communities where rates are subject to "effective competition?"
- Does the Court look from the consumer's point of view to determine whether: (a) a programming service is part of the basic service tier; and (b) digitization of the PEG channel is "discriminatory" because some customers may be required to obtain additional equipment to view the channels?
- Are cable operators precluded from charging for equipment used in connection with the reception of PEG channels on the basic service tier?
- Can PEG channels be digitized, require special equipment to be accessed, and still be considered available on the basic service tier?
- Is digitization of PEG channels "discriminatory" because some customers may be required to obtain additional equipment to view the channels?

The plaintiffs in the case filed a petition for declaratory ruling with the FCC on December 9, 2008, seeking answers to these questions.⁷⁷ The FCC sought public comment on that petition as

(...continued)

<http://democrats.energycommerce.house.gov/index.php?q=archive/110th-congress/chairman-dingell-at-the-subcommittee-on-telecommunications-and-the-internet-1>.

⁷⁴ *City of Dearborn, et al., v. Comcast of Michigan III, Inc., et al.*, Case No. 08-10156, United States District Court, E.D. Michigan, Southern Division, Order of Victoria A. Roberts, District Judge, October 3, 2008.

⁷⁵ 47 U.S.C. §531(e).

⁷⁶ 47 U.S.C. §543(b)(7).

⁷⁷ *In the Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al v. Comcast of Michigan III, Inc. et al.*, MB Docket No. 09-13, City of Dearborn Petition for Declaratory Ruling, December 9, 2008.

well as on two other petitions covering related issues.⁷⁸ Hundreds of parties submitted comments, many in strong opposition to one another.

In February 2010, the three Michigan jurisdictions reached a settlement agreement with Comcast, under which Comcast would continue to deliver PEG channels in analog format on the limited basic cable tier in Michigan until the company digitizes the entire limited basic cable tier, including broadcast channels, or until the community voluntarily agrees to the digitization of the PEG channels.⁷⁹ On February 24, 2010, the parties to the settlement jointly filed at the FCC a “Motion to Withdraw Petition for Declaratory Ruling” and on March 16, 2010, the FCC Media Bureau chief released an order dismissing the original petition and stating that “the Commission need not address the issues raised in the Petition.”⁸⁰

As a result, the FCC chose not to address the policy issues raised in this petition. Nor, to date, has the Commission chosen to address the issues in the two other petitions that had been consolidated with the City of Dearborn petition when the FCC sought public comment in December 2008.⁸¹ NCTA claims, however, that the Commission already addressed some of those issues in earlier orders; for example, it claims that the Commission found, in its First Report and Order on the carriage of digital television signals, that the requirements in section 623(b)(7) of the Communications Act sunset in any franchise area where there is effective competition.⁸²

In January 2011, the FCC approved the transfer of the licenses of the owned and operated broadcast NBC and Telemundo television stations from General Electric to Comcast subject to certain “PEG Conditions.”⁸³ These conditions included:

- Comcast cannot migrate PEG channels to digital delivery in any Comcast cable system until the system has converted to all-digital distribution (that is, until all

⁷⁸ “Entities File Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming,” FCC Media Bureau Public Notice, DA 09-203, February 6, 2009.

⁷⁹ “Comcast, Dearborn, 2 townships reach legal settlement,” *Heritage Newspapers Press & Guide*, February 5, 2010, <http://www.pressandguide.com/articles/2010/02/05/business/doc4b6899edc0b7d820395061.txt>. Similarly, a lawsuit that a number of local jurisdictions brought against Time Warner in Texas was settled, under which Time Warner was allowed to transition all PEG channels from analog to digital format on or after January 8, 2011, subject to a number of conditions. See *Settlement Agreement and Mutual Release between Time Warner Entertainment-Advance/Newhouse Partnership and the cities of Brownsville, Corpus Christie, Edinburg, Laredo, McAllen, San Juan, San Marcos, and Weslaco, TX*, November 10, 2010, [http://www.millervaneaton.com/City%20of%20McAllen%20v%20TWC%20Final%20Settlement%20Agreement%20and%20Mutual%20Release%20with%20Signatures%20\(3\).pdf](http://www.millervaneaton.com/City%20of%20McAllen%20v%20TWC%20Final%20Settlement%20Agreement%20and%20Mutual%20Release%20with%20Signatures%20(3).pdf).

⁸⁰ *In the Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al v. Comcast of Michigan III Inc. et al.*, MB Docket No. 09-13, CSR-8128, Order, adopted and released March 16, 2010.

⁸¹ *In the Matter of Petition for Declaratory Ruling on Requirements for a Basic Service Tier and for PEG Channel Capacity Under Sections 543(b)(7), 531(a) and the Commission’s Ancillary Jurisdiction Under Title I*, Petition for Declaratory Ruling of the City of Lansing, Michigan, MB Docket No. 09-13, File No. CSR-8126, submitted on January 27, 2009, and *In the Matter of Petition for Declaratory Ruling that AT&T’s Method of Delivering Public, Educational and Government Access Channels Over Its U-verse System is Contrary to the Communications Act of 1934, as amended, and Applicable Commission Rules*, Petition for Declaratory Ruling of Alliance for Community Media, et al., MB Docket No. 09-13, CSR-8126, submitted on January 30, 2009.

⁸² *In the Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction in Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc. et al.; Petition for Declaratory Ruling of the City of Lansing Michigan; Petition for Declaratory Ruling of the Alliance for Community Media, et al.*, MB Docket No. 09-13, CSR-8128, 8127, and 8126, Comments of National Cable & Telecommunications Association, March 9, 2009.

⁸³ *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, Memorandum Opinion and Order, adopted January 18, 2011 and released January 20, 2011, Appendix A, Section XIV, ¶¶ 1-4.

analog channels have been eliminated), or until the governmental entity that is responsible for the system's PEG operations pursuant to the law of the state in question otherwise expressly agrees, whichever comes first. Comcast must provide advance written notice to the system's franchising authority and to its local community of its intent to migrate the PEG channels.

- Comcast must carry all PEG channels on its digital starter tier, or on an equivalent tier that reaches at least 85% of the system's subscribers.
- Comcast-NBC Universal must not implement a change in the method of delivery of PEG channels that results in material degradation of signal quality or impairment of viewer reception of PEG channels, provided that this shall not prohibit Comcast from implementing new technologies also utilized for commercial channels carried on its cable systems (including, but not limited to, digitization and switched digital video). Comcast must continue to meet FCC signal quality standards when offering PEG channels on its cable systems and must continue to comply with closed captioning pass-through requirements.
- To enhance localism and strengthen public access, educational, and governmental programming, Comcast must develop a platform to host PEG content On Demand and On Demand Online within three years of the closing of the transaction. (Very specific steps were incorporated into the conditions to meet this requirement.) This is intended to enhance, not replace, existing traditional linear PEG channel carriage.

It is likely that, as a result of the successful analog to digital transition of broadcast television in 2009, the transition of PEG channels to digital is having less impact on households today than it did prior to 2009. But PEG advocates remain concerned that PEG programming is being discriminated against relative to commercial programming. They are particularly concerned about the movement of PEG channels from preferred, low-numbered, channel positions to high-numbered positions (for example, in the 200s or 900s) that are not near other channels—what PEG advocates have come to call “channel slamming.” The cable operators respond, however, that PEG channels tend to have very low viewership and therefore should not command prime channel locations.

The CAP Act includes a signal quality and content provision intended to address some of the public interest concerns that have arisen during the analog to digital transition. A cable operator that is required to provide PEG channel capacity must carry signals for PEG use without material degradation and without altering or removing content or data; make the PEG signals viewable by every subscriber of the cable system without additional service or equipment charges; and provide to the appropriate local government subdivision, free of charge, any necessary transmission services and facilities.

The second provision would appear to prohibit a cable operator that migrates PEG channels from analog to digital delivery from requiring subscribers to migrate from analog to digital service or from charging subscribers for a set-top box to receive the digital PEG channels. The CAP Act also would modify the definition of cable service, making it independent “of the technology or transmission protocol used in the provision of service” to ensure that cable companies that deploy new technology, such as Internet Protocol technology, are not excluded from the requirements.

AT&T's U-verse Service

AT&T offers its U-verse multichannel video programming distribution service using an all-Internet Protocol (IP) technology platform. It is building out an optical fiber network to neighborhood nodes and using the existing copper connections already in place from those nodes to subscribers' premises.⁸⁴ (Each neighborhood node serves several hundred end user customers.) This is a less capital-intensive alternative to the fiber-to-the-premises network being deployed by Verizon in its FiOS network.

As copper has less capacity than fiber, the AT&T network does not simultaneously "broadcast" the signals of multiple video channels all the way to the customer premises, as cable companies do and as Verizon does with its FiOS network. Rather, it employs IP technology that allows the subscriber to use the set-top box to "call up" the particular video stream it desires from a centralized place where the video file is stored—the video hub office serving the designated market area (DMA) in which the subscriber is located or, if that video stream has already been requested by a neighbor served by the same neighborhood node, that neighborhood node.

The major constraint on the AT&T U-verse network is the capacity of the copper loop. Currently, U-verse can provide at most two high-definition channels to a household simultaneously, and for many customers it can offer only a single high-definition channel at a time. To attain the level of audio and video signal compression needed to offer service, AT&T must encode the program signals using MPEG-4 compression methods. (MPEG-4 is an industry standard.)

The content that AT&T receives from programmers is not encoded in MPEG-4 and therefore must be recoded. Each additional video stream (which appears as a "channel" to a subscriber) imposes two categories of incremental costs on AT&T: the cost of additional equipment to encode the programming and the cost of additional dedicated capacity on an AT&T server at a national or DMA hub to store the video stream. For programming that is provided in a continuing, changing flow—such as the programming of a cable or broadcast channel or a PEG channel—each additional video stream requires dedicated encoding equipment to recode the ongoing stream. For programming that is received once and then stored—such as the program library used for video-on-demand "channels"—there is no need for dedicated encoding equipment. Encoding equipment used for one video on demand program can be re-used for another video-on-demand program. Thus the incremental equipment cost associated with an additional video-on-demand program selection is lower than that associated with a cable or broadcast network or PEG channel.

AT&T claims that the incremental encoding and server capacity costs associated with an ongoing video stream, such as that required for a cable or broadcast network or for a PEG channel, is approximately \$200,000. In a large metropolitan area, with many local jurisdictions, each of which currently has several PEG channels, the upfront incremental cost of offering multiple PEG channels thus could be several million dollars.⁸⁵

⁸⁴ Details about AT&T's U-verse service are based on a meeting that CRS staff had with AT&T staff on August 11, 2008.

⁸⁵ At the same time, it is likely that AT&T's U-verse video revenues, and its network build-out and marketing expenses, in a large metropolitan area would be substantial and therefore the relative burden of these upfront costs might not be large.

AT&T therefore has chosen not to make PEG programming available to subscribers in the same fashion that it makes commercial programming available. Instead, it treats PEG content the same way it treats Internet traffic. It has created a separate platform for PEG, with a single channel, channel 99, at which subscribers can find PEG programming, just as they have one channel for Internet access. The PEG content is not encoded in MPEG-4. Rather, the subscriber goes to channel 99 and pulls down a menu that identifies each of the local jurisdictions in the subscriber's DMA and, after clicking on the desired jurisdiction, gets a menu that identifies all the PEG programs for that jurisdiction, for the subscriber to choose from. The selected program is then downloaded to the user's set top box.

PEG advocates claim there are a number of problems with this system.⁸⁶

- The subscriber may experience substantial delay—it can take a minute or more to first go to channel 99 and then navigate two drop-down menus—in getting to (and then away from) the chosen PEG program; the program (and the PEG channel) is not available in the same seamless fashion as non-PEG programming and channels.
- The PEG programming is not shown on AT&T's program guide; there is no way for the subscriber to know what programming is on a PEG channel without going to the channel.
- The AT&T PEG platform has not been fully accessible to hearing-impaired and visually-impaired viewers. It appears that AT&T has worked with Microsoft to better accommodate closed captioning for the hearing-impaired, but it continues to be difficult for the visually-impaired to perform the channel navigation required to get to and from PEG channels.
- AT&T PEG platform does not provide the capability to record the programming on a DVR.
- The picture quality on the AT&T PEG platform is inferior to that on AT&T's commercial channels; PEG is transmitted at a lower resolution and the picture may stutter when displaying rapid motion, as in a sports program.
- By requiring the PEG programmers to deliver their signals to a DMA-wide geographic area, rather than the local jurisdiction, those programmers may be liable for additional costs associated with the broader distribution of copyrighted materials.

On January 30, 2009, a group of PEG advocates filed a petition with the FCC seeking a declaratory ruling that AT&T's method of delivering PEG channels over its U-verse system is contrary to the Communications Act and FCC rules.⁸⁷ Citing a lack of FCC action on the petition, the PEG advocates filed another petition in September 2010,⁸⁸ but to date the Commission has not

⁸⁶ See, for example, Todd Spangler, "AT&T Knocked for 'Inferior' PEG Channels," *Multichannel News*, January 31, 2008.

⁸⁷ *In the Matter of Petition for a Declaratory Ruling that AT&T's Method of Delivering Public, Educational and Government Access Channels Over Its U-verse System Is Contrary to the Communications Act of 1934, as amended, and Applicable Commission Rules*, MB Docket No. 09-13, CSR-8126, Petition for Declaratory Ruling of Alliance for Community Media, et al., January 30, 2009.

⁸⁸ See, for example, Jonathan Make, "Lack of FCC Action on PEG Filings Cited in New Petition," *Communications Daily*, September 22, 2010, at pp. 6-7, and Nate Anderson, "FCC asked to probe AT&T treatment of public access (continued...)"

acted on the petitions. In July 2011, American Community Television announced that PEG advocates asked eight state attorneys general to investigate PEG inaccessibility for the blind and visually impaired over AT&T's U-verse service.⁸⁹ American Community Television also has called for the FCC to condition approval of the proposed AT&T/T-Mobile merger on the fulfillment of specific PEG commitments, analogous to the PEG conditions (discussed in the previous section of this report) that were part of the FCC order approving the transfer of broadcast licenses in the Comcast-NBC Universal merger.⁹⁰

AT&T has filed detailed comments opposing the petitions for declaratory ruling.⁹¹ It explains that its IP network architecture is fundamentally different from the architectures used by the cable companies and Verizon, and contends that it is inappropriate to require it to deploy its network inefficiently in order to meet requirements conceived for traditional cable architecture. It argues that, even though its U-verse service is not a cable service and therefore not subject to the PEG requirements in the Communications Act and in FCC rules, the U-verse service nevertheless fully meets all those requirements. It also claims that its provision of PEG access offers subscribers three benefits: subscribers can view the PEG programming of all the local jurisdictions in their DMA, not just the programming of their specific community; channel 99 is an easy-to-remember, prime channel location; and PEG programming will be in a digital format that can easily be used for the Web, which enables communities to more easily provide the same content over the Internet.

AT&T and its critics in the PEG community have constructed, and made available online, dueling videos that purport to show, respectively, the virtues and the vices of AT&T's U-verse provision of PEG programming. AT&T's video is available at <http://uverseonline.att.net/uverse/peg>; its critics' video is available at <http://www.youtube.com/watch?v=dLJ6Wtk1cqc>.

The CAP Act does not directly address these issues relating to PEG accessibility on AT&T's U-verse service, although the provision requiring cable companies to carry signals for PEG use from the point of origin of the signals to subscribers without material degradation and without altering or removing content or data provided, with the clarification that cable service is defined without regard to technology or transmission protocol, would provide a statutory basis for ensuring that the PEG channels provided by AT&T include closed captioning for the hearing impaired.

Local Institutional Networks (I-nets)

An institutional network is a communications system capable of transmitting video, voice, and/or data signals over optical fiber, coaxial cable, or both, among governmental, educational, and

(...continued)

channels," *Ars Technica*, <http://arstechnica.com/tech-policy/news/2009/02/atts-u-verse-faces-fcc-complaint-over-peg-channels.ars>.

⁸⁹ "Attorneys General in Eight States Asked to Investigate U-verse PEG Inaccessibility for the Blind and Vision Impaired," American Community Television, July 14, 2011, available at <http://acomunitytv.org> by first selecting "news" in the drop-down menu and then selecting "July 2011."

⁹⁰ "American Community Television Calls for PEG Commitments in the AT&T/T-Mobile Merger," American Community Television press release, March 29, 2011, <http://acomunitytv.org/2011/03/american-community-television-calls-for-peg-commitments-in-the-attt-mobile-merger/>.

⁹¹ Comments of AT&T Opposing Petitions for Declaratory Ruling.

possibly other nonresidential users.⁹² Many local governments have required cable operators to construct and maintain, or in some fashion provide support for, an institutional network as a condition for the initial grant, transfer, or renewal of a cable franchise. Section 611(b) of the Communications Act⁹³ allows a franchising authority to require a cable franchisee to set aside channel capacity on an institutional network constructed or operated by the cable operator for educational or governmental use.

In the past, when cable systems typically were designed only to transmit television programming one way from cable operators to residential users, cable operators generally dedicated a limited number of channels to governmental and educational use or constructed stand-alone cable systems for that purpose. Today, cable systems routinely are constructed as hybrid fiber/coaxial cable networks with sufficient capacity and two-way capabilities to accommodate I-net requirements in a single integrated system. In some recent franchise agreements, local governments have obtained a number of “dark” optical fibers in addition to, or in lieu of, channel capacity, and are furnishing the end-user electronic equipment necessary to “light” the fibers themselves—providing vast amounts of broadband capacity at low cost.

These new generation I-nets can support a broad range of uses, including high-speed Internet and intranet access; large-file uploads and downloads; program and data sharing within and among city departments and offices; geographic information system mapping (including graphic, tax, zoning, utility, right of way, legal, and other information in a single database that is searchable from any location); video conferencing; distance learning; vocational training; medical imaging; traffic control; environmental monitoring; management of water, sewer, and electric utilities; remote meter reading; video arraignments and depositions; video surveillance and security; emergency services; advanced library services and cataloguing; computer assisted design and computer assisted manufacturing; city-side or area-wide PBX-like 4-digit dialing; and direct access to long distance providers, avoiding local access charges.

According to a fact sheet on I-nets prepared by the Baller Herbst Law Group, which represents many state municipal leagues and local governments on communications and utilities issues, the National Association of Telecommunications Officers and Advisors (NATOA) conducted a survey, to which 48 communities with I-nets responded, that found that in 56% of these communities, the cable operator built all or most of the I-net; in 13%, a telephone company built all or most of the I-net; and in 44% the local government itself built all or substantial components of the I-net.⁹⁴ In 44% of those communities, the cable operator owns and maintains all or a portion of the I-net; in 19% a telephone company does so; and in 67% the local government owns and maintains all or a portion of the I-net. 25% of the responding communities share operations with a cable company and 19% share operations with a telephone company or electric utility.

The new statewide franchising laws tend not to require new entrants to provide I-nets in their areas of operation if the incumbent cable company has already provided these facilities and there is no identified need to construct redundant networks. Some of these laws also would reduce or

⁹² The following description of institutional networks comes from a report entitled “The FAQs about Institutional Networks,” prepared by the Baller Herbst Law Group, <http://www.baller.com/library-art-faq.html>.

⁹³ 47 U.S.C. §611(b).

⁹⁴ These percentages, reported by the Baller Herbst Law Group at <http://www.baller.com/library-art-faq.htm>, exceed 100%, suggesting either that some of the communities that responded to the survey had multiple I-nets or counted both the local government and the cable or telephone company when the task for building the I-net was shared.

eliminate the I-net requirements in existing local franchise agreements or require the jurisdiction to pay the incremental cable network costs associated with providing the I-net.

When the Alliance for Community Media performed an online survey of its members and NATOA members from around the country in May 2008 to assess the impact of statewide laws,⁹⁵ it sought information on how the laws affected educational and governmental access channels and I-nets as well as public access channels. Of the 204 respondents, 26% reported a loss of or reduction in public cable drops in schools, libraries, and other public centers and 41% reported a loss of or reduction to services to I-nets that connect PEG facilities to schools and government institutions. These survey results must be viewed with some caution, however. The survey was not scientifically performed; PEG programmers or local officials who have experienced reductions in support likely would have had a greater incentive to participate in the online survey.

Cable providers' I-net requirements may also have been clouded by the recent FCC orders which created ambiguity about what constitutes capital costs (and, therefore, what can be charged over and above the 5% franchise fee).

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⁹⁵ "Assessing the Damage: Survey shows that state video franchise laws bring no rate relief while harming public benefits," reported results of a May 2008 online survey conducted by the Alliance for Community Media, <http://www.cantv.org/keepusconnected/Harm-Survey-Report.pdf>.