

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

In the Matter of )  
 )  
Accessibility of User Interfaces, and Video ) MB Docket No. 12-108  
Programming Guides and Menus )

**COMMENTS OF THE  
ALLIANCE FOR COMMUNICATIONS  
DEMOCRACY**

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The Alliance for Communications Democracy (“ACD”) hereby files its comments in response to the Notice of Proposed Rulemaking in this proceeding.<sup>1</sup>

## INTRODUCTION AND SUMMARY

ACD is a national membership organization of nonprofit public, educational and governmental access (“PEG”) corporations that supports efforts to protect the rights of the public to communicate via cable television, and promotes the availability of the widest possible diversity of information sources and services to the public.<sup>2</sup> The organizations represented by ACD have helped thousands of members of the public, educational institutions, and local governments make use of PEG channels that have been established in their communities pursuant to franchise agreements and federal law, 47 U.S.C. § 531.

ACD strongly supports the NPRM’s goal of implementing the requirements of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act<sup>3</sup>—ensuring that “user interfaces on digital apparatus and navigation devices used to view video programming be accessible to and usable by individuals who are blind or visually impaired.”<sup>4</sup> The PEG channels made available by ACM members and thousands of other local PEG centers across the nation are a leading source of unique local public interest, cultural affairs, educational and news programming of interest to the public, including programming for the visually and hearing impaired.

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<sup>1</sup> *In the Matter of Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Notice of Proposed Rulemaking, FCC 13-77 (rel. May 30, 2013) (“NPRM”).

<sup>2</sup> ACD’s members are: Access Humboldt, Eureka, California; Boston Neighborhood Network, Boston Massachusetts; Capital Community TV, Salem, Oregon; Chicago Access Network Television, Chicago, Illinois; CreaTV, San Jose, California; Manhattan Neighborhood Network, New York City, NY; MetroEast Community Media, Gresham, Oregon; Mass Access, PEG access centers throughout Massachusetts; and Alliance for Community Media Western Region.

<sup>3</sup> Pub. L. No. 111-260, §§ 204 and 205, 124 Stat. 2751, 2775 (2010) (“CVAA”), *codified at* 47 U.S.C. § 303 (a)(a) and 303 (bb).

<sup>4</sup> NPRM at ¶ 1.

Unfortunately, however, today the ability of visually and hearing impaired individuals to access, view and hear PEG channels—both generally and vis-à-vis other non-PEG programming channels on cable systems—is dramatically compromised by cable operators’ discriminatorily inferior treatment of PEG channels in terms of accessibility, functionality, and availability of programming descriptions.<sup>5</sup> These serious shortcomings deprive the visually and hearing impaired of meaningful access not only to PEG programming generally—one of the most vital sources of genuinely local programming available to them—but also to reading service programming carried by PEG channels that is specifically designed for the visually impaired.

If Section 205 of the CVAA is to accomplish its objective, the Commission must take two key steps in this proceeding. *First*, it should require AT&T to provide its U-verse video subscribers with access and functionality to PEG programming that is equivalent to that which it provides to linear commercial programming channels on its system. *Second*, the Commission should require that cable operators provide in their electronic programming guides (“EPGs”) programming description information on PEG programming equivalent to the program description information, including closed captioning notification and capability, that cable operators make available in their EPGs to other programming channels.

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<sup>5</sup> Throughout these comments, our references to “cable systems” will include AT&T’s U-verse multichannel video program distribution (“MVPD”) systems, and our references to “cable operators” will likewise include AT&T. AT&T claims that its U-verse MVPD system is not a “cable system” and that it is therefore not a “cable operator.” See Comments of AT&T Opposing Petition, *Petition for Declaratory Ruling of Alliance Community Media et al.*, CSR-8126, MB Docket 09-13 (“*ACM PEG Petition*”), at 14-21 (filed March 9, 2009). ACD disputes AT&T’s claims, see Reply Comments of Alliance for Community Media et al., *ACM PEG Petition*, at 5-14 (filed April 1, 2009), but for purposes of this proceeding, it doesn’t matter. AT&T concedes it is an MVPD (See Reply Comments of AT&T, *Public Notice on Interpretation of the Terms “Multichannel Video Programming Distributor” and “Channel” as Raised in Pending Program Access Complaint Proceeding*, MB Docket 12-83, at 2 (filed June 13, 2012); and the NPRM tentatively, and correctly, concludes that Section 205 applies to MVPDs. See NPRM at ¶¶ 12 and 17.

**I. PEG CHANNEL PROGRAMMING DESERVES EQUAL TREATMENT WITH ALL OTHER REAL-TIME VIDEO PROGRAMMING CHANNELS UNDER THE CVAA.**

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At the outset, we note that the requirements of Section 205 do not distinguish among kinds or classes of video programming. Section 205 certainly does not distinguish PEG programming or exempt PEG programming from the obligations it imposes on cable operators and other MVPDs. Section 205(a) requires “real-time” accessibility for the visually impaired to “on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming.” Failing to provide the same accessibility for PEG channels is contrary to Section 205.

In fact, providing adequate accessibility to PEG channels is especially important for the visually impaired in two ways.

*First*, PEG programming is a unique source of local programming created by and for the local community. The role of PEG access in developing technological and media literacy has never been more important than today. PEG centers provide constructive outlets for people of all ages to learn media skills and create programming on a range of issues. PEG channels give nonprofit organizations an outlet to reach members of the public in need of assistance. PEG channels furnish a platform for civic debate around local issues. And during local elections, PEG channels provide opportunities for candidates to address the public directly and fully, without being limited to a 30-second sound bite.

Thousands of hours of new, original programming appear on PEG channels every day throughout the country, bringing local information into the home that would not otherwise be available. PEG channels welcome community members, politicians, preachers, experts, educators and artists. PEG participants are not screened or selected by corporate management or

advertising interests; they participate because they have something to say. It's their community, and PEG channels are their local channels.

The role of PEG channels is particularly important at a time when local news on commercial television has become less substantive than before and when “the amount of coverage dedicated to important public issues—like education, health and government—remains tiny.”<sup>6</sup> The Waldman Report notes that the relative financial health of cable television “has not led the cable industry to invest heavily in news and public affairs in their communities.”<sup>7</sup> On the other hand, the commitment of PEG programmers to promoting social services, arts and civic events, public safety, and other issues close to home, demonstrates what is possible when the community is given the opportunity to participate in the television medium.

The quantity of uniquely local original programming that PEG provides to communities is substantial. A 2010 sampling performed by the Alliance for Community Media (“ACM”) showed an average PEG Access provider ran 1,867 hours annually of first-run local programming on its PEG channel(s) per year, or 35 hours per week. By way of example, in its comments filed in this docket on July 10, the Chicago Access Corporation pointed out that local groups and residents create an average of 140 new, original hours of programming each week for cablecast on CAN TV, more that Chicago’s local broadcast stations combined. Whether in an urban area, suburb or small town, PEG channels are focused on the local community they serve, cablecasting local events, town hall and council meetings and school activities that rarely receive full coverage on commercial media or public broadcasting.

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<sup>6</sup> Waldman, *The Information Needs of Communities*, [www.fcc.gov/infoneedsreport](http://www.fcc.gov/infoneedsreport), June 2011, at 114 (“Waldman Report”).

<sup>7</sup> *Id.* at 115.

Moreover, viewers value PEG programming highly. Appended as Attachment A to ACD's comments in the *Future of Media* proceeding, GN Docket No. 10-25, are the results of a telephone survey concerning PEG viewership and demographics, and the value that subscribers attach to PEG programming. The survey's major findings were: (1) 74% of cable subscribers say PEG programming is "very or somewhat important to them;" (2) 59% of cable subscribers say that more than \$1.00 per month per subscriber should be devoted to PEG programming; (3) PEG channel number locations matter, because channel surfing decreases dramatically as the channel number increases, especially for channels above 100; and (4) older and lower income subscribers are less likely to access the Internet and therefore rely more heavily on cable for information.<sup>8</sup>

*Second*, PEG channels also offer reading services— programming specifically directed at the needs of the visually impaired—that are often unavailable from any other source. For example, Raleigh, North Carolina's RTN public access channel 22 carries the Triangle Radio Reading Service ("TRRS"), which provides local news and information for blind, visually impaired and elderly people in the greater Raleigh area.<sup>9</sup> Similarly, Chicagoland Radio Information Service ("CRIS") is carried on CAN TV's PEG channels in Chicago, providing daily readings of newspapers and periodicals as well as special interest programs serving the interests of Chicago's visually impaired community and other listeners who have a wide range of disabilities.<sup>10</sup>

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<sup>8</sup> *Id.* at Attachment A.

<sup>9</sup> See *Petition for Declaratory Ruling of ACM et al.*, CSR-8126, MB Docket No. 09-13, at 12 (filed Jan. 30, 2009) ("ACM Petition").

<sup>10</sup> *Id.* at 12n. 5.

## **II. AT&T'S U-VERSE "PEG PRODUCT" UNIQUELY DISADVANTAGES THE VISUALLY IMPAIRED.**

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More than four years ago, in early 2009, ACD, along with several other PEG centers, national and regional organizations, and local governments, filed a petition with the Commission seeking a declaratory ruling that the manner in which AT&T's U-verse video service offering treats PEG violates the Cable Act and applicable Commission rules.<sup>11</sup> That petition remains pending.

AT&T's "PEG product" creates unique and insuperable barriers to the ability of visually-impaired subscribers to access PEG programming. As pointed out in the ACM petition,<sup>12</sup> AT&T treats PEG channels on its U-verse system very differently than non-PEG channels. Unlike the linear channels on AT&T's system, which the visually impaired can reach simply by remembering the correct channel number, with AT&T's PEG product the visually impaired must select "channel 99," recognize that channel 99 is not a linear channel but an application that the subscriber must launch, and then figure out how to navigate a series of on-screen menus and sub-menus just to reach particular PEG programming. The more PEG channels in a DMA, and the more PEG channels in each local jurisdiction, the more sub-menus the visually impaired must somehow "see" and navigate on AT&T's PEG product.

A viewer must start the AT&T PEG product by pressing the "OK" button to launch "channel 99"; there is no sound on the "channel" or any cue, so the viewer must read (or know) to press OK to begin. But once "channel 99" is selected from the main menu, there is even less information about what is on the "channel" than on many cable operators' menus. There is also

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<sup>11</sup> ACM Petition. See Public Notice, "Entities File Petitions for Declaratory Ruling Regarding Public, Educational and Government Programming," DA 09-203 (Feb. 6, 2009).

<sup>12</sup> ACM Petition at 10-17.



an ability to choose from the start menu, which the subscriber has to be able to “see” before she can even get to the interactive program guide. Thus, to access PEG channel programming, AT&T’s PEG product requires a subscriber to navigate multiple submenus and take certain steps just to “activate” the “channel”—steps that are at best highly problematic and at worst, insurmountable for the blind. Assuming that the visually-impaired subscriber can surmount the sub-menu loading and navigation challenges and finally arrive at the desired PEG channel, the viewer will face similar obstacles all over again if hoping to surf between that PEG channel and non-PEG channels, or between and among other PEG channels and non-PEG channels.<sup>13</sup>

One example illustrates this point:

The many time-consuming steps a subscriber must take to find and retrieve a particular PEG channel’s programming on AT&T’s U-verse system is a clear inconvenience and a barrier to accessing PEG programming that a subscriber need not overcome in accessing broadcast and commercial cable channels. But it is also more than that: It can be an insurmountable obstacle for the visually impaired.

This is no small matter. For instance, Raleigh’s RTN public access channel 22 carries [TRRS], which provides local news and information for blind, elderly and print-impaired people in the greater Raleigh area. Today, on the incumbent operator’s system, a visually-impaired subscriber need only remember to enter “22” on the remote to reach TRRS. With AT&T’s PEG product, however, a visually-impaired subscriber’s remembering to enter “99” would be insufficient to reach RTN 22’s TRRS. Rather, the visually-impaired subscriber wishing to reach RTN’s 22 TRRS would have to know to wait for AT&T’s PEG product to load, and then somehow have to be able to view, scroll down, find the correct community and then the correct PEG channel in the submenu for that community, then click through each of the AT&T PEG product menu and submenu screens to reach TRRS—a task that would be, to say the least, a serious challenge to anyone who is visually impaired.<sup>14</sup>

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<sup>13</sup> *Id.* at 13 n.6 and 16-17.

<sup>14</sup> *Id.* at 12-13.

The barriers that AT&T's PEG product erects for the visually impaired are not, of course, limited only to their ability to access reading services. These barriers frustrate the visually impaired's access to *all* programming—local government meetings, civic affairs, educational and cultural programming—available on PEG channels, programming that is just as vital to the visually impaired as it is to the non-visually impaired.

Granting the long-pending ACM Petition would eliminate this serious barrier to the disabled that is endemic to AT&T's PEG product. But even if the Commission does not act promptly on the ACM Petition, the demands of the CVAA require the Commission to take action in this docket to make clear that the barriers that AT&T's PEG product imposes on the ability of the visually impaired to have “real-time” access to on-screen text menus and guides for PEG programming are not permissible under the CVAA.

AT&T's PEG product runs afoul of Section 205's mandate of “real time” access to “on-screen text menus and guides.”

To make a program guide accessible in “real-time,” the number of steps required to start a guide and find and identify the desired channel and program must be minimized. For any guide for live, real-time programming like PEG, there should be a single button, and the guide listing PEG channels and programs should start up and appear audibly without further interaction. That is true for the most general programming guides, but it is *not* true of AT&T's channel 99 PEG product. In this respect, the defect with AT&T's PEG product is directly analogous to the problem noted in paragraphs 42-46 of the NPRM concerning the need for a single button, key or icon to activate closed captioning and video description.

In addition, AT&T's PEG product fails to provide a simple way for the user to know that she is on an application rather than a channel. That could be solved if each jurisdiction's PEG

channels were accessible via a distinct button. But that is not true for PEG channels on AT&T's system. Moreover, AT&T's PEG product fails even to let a user know that she is on the first screen of AT&T's PEG product application, and hasn't simply tuned the wrong linear channel (e.g. Ch. 9 or 999 rather than 99). AT&T's main channel guide provides this information for other channels, but its channel 99 PEG product does not for PEG programming. There is no tone that even indicates to the subscriber that channel 99 is not a linear program at all, but an application with its own menus and submenus. As a result, when she goes to channel 99, a visually-impaired subscriber likely does not even know that it is an application that she needs to interact with.

At bottom, Section 205 requires that there should be no submenus to access channels used to deliver real-time video programming; all real-time linear programming should be accessible via the same menu. That is, all real-time video programming should be equally accessible. AT&T's PEG product fails that test.

**III. THE FCC HAS LEGAL AUTHORITY TO REQUIRE, AND SHOULD REQUIRE, CABLE OPERATORS AND OTHER MVPDS THAT CARRY PEG TO PROVIDE PROGRAMMING DESCRIPTION INFORMATION FOR PEG CHANNELS IN EPGS TO PROMOTE ACCESSIBILITY FOR THE VISUALLY AND HEARING IMPAIRED.**

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Most cable operators refuse to provide the same sort of program description information for PEG channels in their EPGs that they provide for other programming channels. Instead, cable operators typically post a generic "local programming" label for PEG channels on their EPGs for all hours, with no separate identification, much less any description, of individual PEG programs at all. Importantly, cable operators typically refuse to insert PEG program information in their EPGs, or to permit PEG programmers to supply such information to the operator's third-party EPG provider, even if the PEG center agrees to provide such program description information on the same basis as other programmers supply such information for EPG insertion.

As a result, most cable operators' EPGs furnish cable subscribers with no PEG program descriptions at all. That means that, contrary to Section 205's requirements, most EPGs cannot make "the display or selection of" PEG programming "audibly accessible in real-time on request." And it also means that cable subscribers receive no closed captioning designation for individual PEG programming on EPGs, a significant loss for hearing impaired subscribers, because a significant amount of PEG channel programming is closed captioned.

To solve this accessibility problem, ACD believes that the Commission should "require that MVPDs provide programming description information in programming guides for local programs and channels"—including PEG programming and channels—"for the purpose of promoting accessibility."<sup>15</sup> For the reasons stated by Montgomery County, Maryland, the Commission has authority, under the CVAA or, alternatively, under its ancillary jurisdiction, to impose such a requirement on MVPDs.<sup>16</sup>

Moreover, imposing such a PEG program description requirement on MVPDs would be consistent with the NPRM's request that commenters "limit their comments on this issue to topics that directly affect individuals who are blind and visually impaired rather than television viewers at large."<sup>17</sup> Program description information, which Section 205 would require to be "audibly accessible" by blind or visually impaired individuals, is of special and unique importance to those individuals.

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<sup>15</sup> NPRM at ¶ 36.

<sup>16</sup> Letter from Gail A. Karish, Counsel for Montgomery County, Maryland's Office of Cable and Broadband Services, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 12-108 (May 6, 2013).

<sup>17</sup> NPRM at ¶ 36 n.94.

As the *VPAAC Second Report* noted, access to program description information in EPGs, while of value to all subscribers, can be especially important to the visually impaired.<sup>18</sup> Unlike the non-visually impaired, who can often quickly ascertain the topic or nature of a particular program by sight after clicking on to it, the visually impaired cannot rely on a “quick look” at a program to find out what it is about and whether it is of interest to them.<sup>19</sup> Only access to program description information in the EPG—which in turn is made “audibly accessible”—can provide that information to the visually impaired. Placing PEG program description information in the EPG is therefore necessary to fulfill the objectives of the CVAA. Accordingly, the Commission should promptly adopt a rule in this proceeding requiring MVPDs to include PEG program description information in their EPGs.<sup>20</sup>

## CONCLUSION

For the foregoing reasons, the Commission should (1) require AT&T to provide its U-verse video subscribers with access and functionality to PEG programming that is equivalent to that which it provides to linear commercial programming channels on its system; and (2) require cable operators and other MVPDs that carry PEG programming to provide in their EPGs program description information on PEG programming equivalent to the program description information that they make available in their EPGs for other programming channels.

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<sup>18</sup> Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, User Interfaces, and Video Programming and Menus, at 18 (April 9, 2012) (“*VPAAC Second Report*”).

<sup>19</sup> *Id.*

<sup>20</sup> Should the Commission nevertheless determine not to impose such a requirement at this time, due to the tight deadline placed on it to implement Sections 204 and 205 (NPRM at ¶ 36 n.94) or due to concerns about its authority to impose such a request, then the Commission should promptly initiate a follow-up further notice of proposed rulemaking, or initiate a new rulemaking, to address the specific issue of requiring cable operators and other MVPDs to include in their EPGs program description information for all local programs and channels, including PEG programs and channels.

Respectfully submitted,

*/s/ James N. Horwood*

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