

[REDACTED]

From: Egan, Thomas [REDACTED]
Sent: Thursday, January 22, 2015 5:19 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear Sir or Madam:

For identification, my name is Thomas A. (Tom) Egan and I am a member of the Dakota County, Minnesota Board of Commissioners. Earlier this month I was elected by the board to serve as board chair for the year 2015. Dakota County is the third most populous county in the State of Minnesota with a population well in excess of 400,000.

Without question, counties have a greater responsibility for implementing their own programs, operating their own facilities and administering programs of other jurisdictions than any other form of local government. Despite this fact, counties are often referred to as the invisible form of government because a large portion of the public knows little about what counties do. This is exceedingly frustrating. For example, Dakota County operates with an annual combined operating and capital budget of approximately \$350 Million with a local property tax levy this year of \$129 Million and yet many people don't know where that money goes.

One way for counties such as Dakota to be more accountable and transparent with constituent taxpayers is to better communicate our ongoing activities and operations. There are a number of ways to do this such as a good relationship with the media, press releases, open houses, news letters, etc. My county board district includes most of Egan, Minnesota. I am very pleased to tell you that the City of Egan while operating its Egan TV public, education, government (PEG) public access system has agreed to broadcast the regular meetings of the Dakota County Board of Commissioners on government access channel 16. This way, my taxpaying constituents can see first hand how their county government is run. I have spoken to many constituents who have told me how much they appreciate being able to watch those televised meetings.

If anything, to insure greater democracy, we need more transparency in government rather than less. I personally oppose any effort to make access to information on the operation of local government more difficult. Please let me know if I can provide you with any additional information or if you have any further questions, comments or concerns. Thank you for your consideration.

Sincerely,

Tom Egan

Thomas A. (Tom) Egan
Dakota County Board, Third District

[REDACTED]

Sent from my iPad

January 22, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Gentlemen,

The above mentioned white paper being circulated in the committee asks for comments concerning if cable companies should continue to provide "...**access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?**" I would like to express to you and the committee that indeed these provisions are more than important than ever across the ever-changing technical landscape.

In our community, Elk Grove Television – EGTV has provided for the creation, production, post-production, promotion and scheduling of programming highlighting Village policies, procedures and events including live coverage of Village Board Meetings, Park Board Meetings and other live programming since 1985. EGTV provides a conduit for local community information that cannot or will not be provided by local broadcast channels, newspapers, or even internet outlets, most of whom are controlled by the very entities previously mentioned.

Program, leased channel and PEG channel access is the least that should be required in the Internet age. It would be better for everyone, except the incumbent provider, if fiber to the premise networks were built and opened up to all comers. That is the only way to get true competition. It is silly to require competitors to build complete networks in order to compete. Even AT&T relies on its existing twisted pair network to offer competitive service. A fiber optic utility should be put in place to allow complete access to all providers who care to use it. Telecom consumers have been paying higher costs for decades to pay for such networks and have yet to see much in the way of improved networks.

As it stands now, program access, leased access, and PEG is the only way for competitive program providers to get access to cable systems today. Increased industry consolidation reduces localism and increases the wealth and political power of incumbent telecom providers. State and federal laws have reduced the role of municipal oversight of cable operators resulting in increased consumer

dissatisfaction with unresponsive cable behemoths. PEG access is becoming one of the last bastions of true localism as broadcasters look increasingly to national and world news. PEG is about the only avenue, other than YouTube, that the common people and local governments have to mass media. It is a small price to pay to be able to put proprietary networks into the public rights-of-way for a near monopoly telecom network.

These cable controlled high-speed networks also allow the cable provider to control access to the Internet. These networks offer the highest speed Internet to consumers and the highest profit to the cable provider. Increasingly little of the network capacity is being devoted to video programming, which was its original purpose, and more and more devoted to Internet, telephony and other services (such as home security) for which it does not need to pay a franchise fee.

Franchise fees should be paid for all services provided over networks in the public right-of-way (ROW). Instead cable providers offer less and less in return for use of the ROW. For example, PEG channels are forced to remain on obsolete SDTV signals while all others have transitioned to HDTV. Our facility has been shooting and mastering programming in full HD for more than five (5) years, but we must down convert our signal to SD to be shown on the cable system. The cable company's rationale for this is that they do not have the bandwidth needed to provide HD PEG signals, even though they have reclaimed the 6 MHz PEG channels and put them on digital channels using a small fraction of the former bandwidth needed. If there is not enough bandwidth for HD PEG channels it is because that bandwidth has been allocated for increased high profit non-video services on which they do not pay franchise fees.

To really improve the telecommunications landscape, the Cable Act should be changed to open the systems to multiple providers. There should be enough bandwidth and switching capacity to the home today to allow consumers to choose between Comcast, Time Warner, Charter, et al, as well as multiple Internet Service Providers (ISPs) and telephone providers rather than being limited to one incumbent provider. Perhaps a last-mile broadband utility is needed to accomplish this.

In an effort to enhance competition the State of Illinois enacted a state-wide franchise (SWF) to allow for easy access to the rights-of-way. There has been very little additional competition in the nearly eight years since enacting the SWF in Illinois. AT&T, who helped craft the legislation, has gone into a limited number of areas to cherry pick where they think they might be able to gain the most profit rather than serving entire communities. In Elk Grove Village only about half our residents can get the U-Verse service. In addition AT&T's Channel 99 solution for PEG channels continues to discriminate against local programming by not providing the video, aural, and functionality of other channels on their system.

Thank you for your attention to these important matters.

Ross Rowe
Cable Production Coordinator
EGTV Channel 6 – Village of Elk Grove Village
901 Wellington Avenue
Elk Grove Village, IL 60007
(847) 357-4270
<http://www.eg-tv.org>

[REDACTED]

From: Mary Kay Elloian [REDACTED]
Sent: Thursday, January 22, 2015 11:01 PM
To: CommActUpdate; CommActUpdate
Cc: [REDACTED]
Subject: Community Media & PEG - Keeping Both the Message & Medium Alive

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear JJ. Upton and Walden:

As a participant in community media, Hosting & Producing educational programming, I wanted to inform you that community media, PEG is vitally important to communities across the region, and I would surmise across the nation. Not only is PEG critical to providing information directly to the community, but it also serves as a means of community reaching out to get their messages heard on platforms outside their own communities-- those which affect their state and their nation on a larger scale.

Altering the construct and delivery of such programming would not only undermine the foundation of the PEG system, but would marginalize it as well. We recognize that no one delivery mechanism is perfect, but the one currently in place is working, not only for the people of the situs community, but for those target communities where local programing can be distributed to reach.

PEG is a means to encapsulate ideas, and distribute them to those who wish to engage in the constructive exchange of ideas and information. This free exchange of ideas is no doubt what our framers had in mind when envisioning our First Amendment right to free speech.

With all these elements in play, we urge you to see PEG for what it is, a platform that provides an exchange of information to those who wish to receive the message. As a result, PEG delivery not only serves to benefit the local community, but distant communities as well. This is accomplished by providing timely information on a regular basis, and critical information exchange on an as needed basis,--uch as in a time of crisis where communities need spontaneous information and direction. PEG in its current form, serves this need quite well.

We thank you for considering this timely submission on your review of PEG as it stands, and we thank you for the opportunity to engage in that discussion.

Respectfully submitted,

Mary Kay Elloian, Esq.
Host & Producer: The Legal Edition-Legal, Business & Policy News

[REDACTED]

From: Tim Erskin [REDACTED]
Sent: Thursday, January 22, 2015 9:20 AM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

KMVT15 Community television Is an important part of my daily life. I use it to access information about my community. I have been watching shows on KMVT since the day it opened. We need community TV to give us a voice

--

Tim Erskin

[REDACTED]

From: Chuck Peña [REDACTED]
Sent: Friday, January 23, 2015 5:19 PM
To: CommActUpdate
Cc: Mike Wassenaar
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Fairfax Cable Access Corporation

[REDACTED]

[REDACTED]

January 23, 2015

The Honorable Fred Upton

2183 Rayburn House Office Building

Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear Congressman Upton:

Fairfax Cable Access Corporation (FCAC) wishes to respond to the above referenced white paper, and specifically to the following:

"Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?"

FCAC believes that provisions protecting PEG (public, educational and government access) channels are indeed warranted and serve the best needs and interests of the numerous communities served by such channels.

FCAC is a 501(c)(3) nonprofit educational organization located in Fairfax County, Virginia. FCAC provides training in public access television and radio production to residents of our community and operates cable channels in the County. FCAC is an independent, nonprofit organization, and is neither a part of the County government nor any MVPD. FCAC programming is carried by Comcast of Virginia, Inc., in Reston, Virginia. Throughout Fairfax County, Virginia, by Verizon Virginia, Inc., and, throughout Fairfax County, EXCEPT Reston, by Coxcom, LLC, (d/b/a Cox Communications of Northern Virginia).

FCAC provides a special and unique avenue for members of our community to express themselves over the electronic cable television medium that serves our community. The loss of this "electronic avenue" would make our community the poorer for such loss.

FCAC provides members of our community with low-cost, hands-on training in television and radio production and post-production. Further, FCAC provides three high-definition television studios and two radio studios for our community's use. Our community members who have successfully completed and become certified in training to operate our studio equipment are allowed to use these studios at NO CHARGE.

FCAC currently operates four cable channels over which we cablecast community-produced programming.

CHANNEL 10 provides English-language programming on a wide variety of topics and subjects -- ranging from public affairs, sports, cooking, the arts, children's, comedy, and a variety of other programming.

WRLD 30 is our International Channel, which features programming in 12 different languages, including Spanish, Vietnamese, Korean and other languages serving our ethnic communities, which provides a great benefit and service to our richly diverse population. (30% of our County's population is foreign-born.)

SPIRITUAL TV 36 is our faith channel, which featuring programs, reflecting the rich spiritual beliefs and ideals held by our community, produced by churches, synagogues, temples and other religious, inspirational and faith-based groups and organizations

WEBR 37 is our cable radio channel which features an incredibly wide spectrum of radio show genres – public affairs, talk, jazz, rock, country, classical, et al. -- and a video community bulletin board that runs announcements for numerous community, civic and volunteer organizations serving our community and make our community a better place to live.

In calendar year 2014, FCAC cablecast **2,653 non-repeat hours of cable television programming** and **3,729 non-repeat hours of cable radio programming**.

One question which I am often asked is whether a cable television-based media access center is necessary in the age of YouTube and other Internet delivery options. My answer is that a cable television-based delivery system is of the **utmost value**. A **wonderful** thing about the Internet is that it provides virtually unlimited television viewing (and radio listening) options and choices, and a **terrible** thing about the Internet is that it provides virtually unlimited television viewing (and radio listening) options and choices. In a delivery system of almost infinite choices, it can be extremely difficult for members of our community to navigate these systems in order to find programs produced in our community by their neighbors. I have met a great number of new members of FCAC who have told me that they have found our community programs and channels while “channel surfing” through their cable channels. The ability for community members to “accidentally” come across our community programs would be immeasurably diminished if these community programs were only offered through Internet distribution.

Further, the current cable television franchise model, which allows local governments to collect up to a 5% franchise fee and up to a 3% PEG capital fee, in exchange for giving the cable providers rent-free use of the public right of way, provides immense benefit to these localities; their public school systems and other educational institutions; and community media centers, such as FCAC. Currently, FCAC is provided with eight-tenths of one percent (0.8%) of our cable providers’ revenues, which allows us to offer our valuable services to our community.

In conclusion, FCAC believes provisions requiring PEG access are still necessary and warranted today, and respectfully requests that the House Energy and Commerce Committee give favorable consideration to our comments.

Respectfully submitted,

Chuck Peña

Executive Director

Fairfax Cable Access Corporation (d.b.a Fairfax Public Access)



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



January 23, 2015

VIA EMAIL

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to the House Energy & Commerce Committee White Paper #6

Dear Representatives Upton and Walden,

My name is Jeremy Crosby and I am the Community Media Services Manager for Fitchburg Access Community Television or FACTv in Fitchburg, WI. We are a PEG station serving a population of 570,000 residents. I would like to take this opportunity to comment on the House Energy and Commerce Committee's Communications Act. There was a question written in the white paper that reads *Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?* I would answer this question by saying "yes", there is still a need to provide those provisions in the Internet era.

Our station has been providing our community with local government programming through covering meetings, providing local coverage of our city events and activities, and providing classes and training to citizens of all ages just to name a few of the many things we do as a PEG station. We are able to provide citizens with video production equipment, facilities, and the proper training to get their message out to the community.

The funding that is coming from the franchise fee's, from the cable provider is our main source of revenue. Without that, we would not be able to provide the community with all of services we offer. We have helped put technology in kid's hands that might never have had the opportunity to do so. We teach multi-media classes to our seniors that come to the senior center. Without

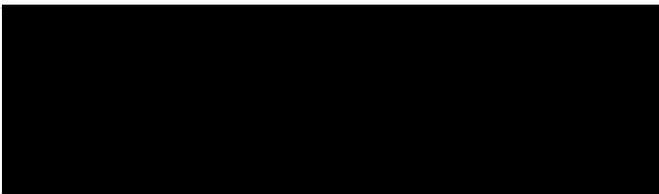
continued funding in the Internet era, our citizens would not be able to share their voice to the community through PEG stations.

Our station provides the community with Live Streaming and Video on Demand through the Internet. This allows our community another way to view programming and better fits their schedule's with a world on the go. We understand the need of providing our citizens with Internet services and have been doing so since 2010. We can see more of our citizens are taking to the Internet to get their information about our city and you can help us continue to get our message out by moving us into the Internet era.

I would like to ask that you really think about the question above. Please apply the same kind of provisions from cable television to "information services" or to video programming sent through the Internet, community media centers across the country and all the local coverage we provide could easily disappear. The franchise fees and PEG fees (legal in most states) cable operators collect from subscribers should also be collected on Internet service revenue. My concern is that eventually, cable companies may choose to carry all of its programming through its Information Services side. If that were to happen, municipalities would be left with no franchise fees and no source of revenue to fund community media and government coverage.

Thank you for your time.

Sincerely,



Jeremy Crosby

Community Media Services Manager

Fitchburg Access Community Television (FACTv)

5520 Lacy Rd, Fitchburg, WI 53711

Main Phone: 608-270-4226

Cell Phone: 608-216-8037

Jeremy.crosby@fitchburgwi.gov

[REDACTED]

From: Tracy <[REDACTED]>
Sent: Friday, January 16, 2015 11:27 AM
Cc: CommActUpdate; [REDACTED]

Subject: Re: HOUSE OF ENERGY and Commerce Committee Comment: Request that you move in favor to support that all "Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels,...

For your consideration ,
>
> Jan. 16, 2015
>
> FROM: Tracy Foley Station Manager, WCCA TV, Public Access TV in
> Worcester
>
> TO: The Honorable Fred Upton
>
> 2183 Rayburn House Office Building
>
> Washington, DC 20515
>
> &
>
> The Honorable Greg Walden
>
> 2185 Rayburn House Office Building
>
> Washington, DC 20515
>
> *
> Dear Mr Upton and Mr Walden and members of the House Energy and
> Commerce Committee; *
>
> /*Please respect our request that you move in favor to support that
> all "Cable systems are required to provide access to their
> distribution platform in a variety of ways, including program access,
> leased access channels, and PEG channels. */

> /*"Are these provisions warranted in the era of the Internet?" YES,
> MORE THAN EVER.*/

>
>
> Thank you for your consideration.
>

> Sincerely, Tracy Foley
>
> Station Manager & Program Director
> Producer, "Soapbox"
> Host /Producer/ Editor, "Video Jam" & "Video Jam Country"

>
> Mailing Address:
> WCCA TV
> Care of : Tracy Foley
> [Redacted]
> [Redacted]

>
> Contact:
> [Redacted]
> [Redacted]
> [Redacted]

>
> WCCA TV Now Showing on Channel 194
> www.wccatv.com Streaming live 24/7
> Also Video On-Demand

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8 Valley Road
Bethany, Connecticut 06524-3410
19 January 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

To the Chairmen:

Thank you for the opportunity to offer comment on the Committee's recent White Paper. Since 1996, I have been involved in community access television as a volunteer, making video of Bethany town meetings and forums to the Comcast public access channel. Since 2003, I have worked part-time for the neighboring Town of Woodbridge, coordinating production and programming for their town-specific government access channel. To improve my work in both these positions, I became a member of the Alliance for Community Media, and volunteered as a board member for the Connecticut chapter and for the Northeast Regional chapter of that organization.

2. *Cable services are governed largely by the 1992 Cable Act, a law passed when cable represented a near monopoly in subscription video.*
 - b. *Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?*

I believe that **community access channels must continue to be provided by all video providers** to all subscribers. Internet service of adequate quality for video programs is not available and affordable to all people at this time. Some community access operators provide their programming on the Internet, but not all can do so. Many viewers who might benefit from local programs have difficulty finding them in the galaxy of Internet video.

I first learned to produce for PEG access when my children's elementary school needed a building expansion. Getting detailed information and discussion on the issue was difficult at that time. I still feel the process of town meeting government needs more attention; PEG access is a reliable way to bring this to Bethany residents.

The Woodbridge government access channel was first established after our regional secondary school system suffered a financial scandal, followed by a year of seventeen failed budget referenda. Recordings of school board meetings produced by the neighboring Town of Orange woke up more people in both Woodbridge and Bethany to the value of governmental access at the local level. The school district situation calmed down in the next year, and many people involved felt that video recording of meetings helped restore confidence in the system. Consistently showing meetings where all opinions can be heard makes community access channels tools for better democracy.

As local newspapers have withered away, and regional papers are stretched financially, the PEG channels are one of the few resources for views and news on local issues. These issues are not eclipsed by larger state and national stories on this platform. The Patch.com news websites helped fill in the gap for only briefly before they collapsed. Only dedicated nonprofit entities—especially the PEG access channels—last to inform the public of issues in their own town or neighborhood.

YouTube is often cited as “the new public access,” and I have made use of it for both towns I serve. But I still encounter people who only find the Woodbridge channel during their bouts of insomnia, as they suddenly see familiar faces while surfing the channels. And I still need to point people to the particular YouTube channels I manage if they miss seeing something on television. The Internet is an important supplement, but not a substitute, for PEG channels.

Cables are still a “near monopoly” in Connecticut, even with the advent of IPTV in 2007. When AT&T in the state recently transferred its landline business to Frontier Communications, many customers suffered loss of quality in their video service—signal blackouts and the inability to bookmark their favorite channels on the channel 99 PEG menu. I heard just last week from one Woodbridge resident who reluctantly returned to cable service; scrolling down through the alphabet of 168 towns to get to W was too awkward for her. Direct satellite television is not possible for some Connecticut homes because of trees that homeowners want to keep or find too expensive to remove. Hills and valleys obscure both broadcast and satellite reception.

The last time I examined annual reports filed with the state Public Utility Regulatory Agency (PURA), I counted 112 access studios in the state—14 operated by cable companies, 22 by nonprofit organizations and 76 by schools or municipalities. Most of the nonprofits operate on relatively lean budgets compared to studios in other states I have visited. Altogether PEGs operate 52 regional and 114 town-specific access channels. Most cable households receive only 3 digital channels in standard definition (or “low definition” as my husband recently called it). Any cable company would not win much bandwidth for a commercial enterprise by eliminating the PEG access channels. They would lose much of the original programming for which they can take some credit, as well as the good will of many of their subscribers.

5. *Over-the-top video services are not addressed in the current Communications Act. How should the Act treat these services? What are the consequences for competition and innovation if they are subjected to the legacy rules for MVPDs?*

The very existence of OTT video and the availability of à la carte service for consumers is already keen competition for legacy MVPDs. Examining annual reports to state PURA, I see evidence of significant “cord-cutting” in some areas of Connecticut. **But on its own, the legacy of funding for and availability of community access programming is too small to hurt any provider in the industry.**

My concern in this area is how OTT affects funding for PEG access operations. Because all traditional franchise fees go to the state General Fund, our community access studios subsist only on per-subscriber fees of \$5.70 to \$10.57 per household per year, or a few cents a month. As OTT service expands, and if cable and telephone companies continue to be the primary ISPs, a similarly small per-subscriber fee should be assessed from them for continued support of the PEG programming. Such support is not enough to significantly deter competition or innovation for those businesses.

I appreciate the Committee’s thoughtful consideration of how to update policy in this swiftly developing sector of our society. Communications technology is a moving target and rewriting the law to address an ever-changing situation is a challenge. The video industry could take pride in advances made under existing regulations without seeking to eliminate the beneficial public institutions created in the course of its development.

Yours truly,
Pua Ford
203-305-4068
pua4d@yahoo.com

[REDACTED]

From: Kathryn Fox [REDACTED]
Sent: Tuesday, January 20, 2015 9:43 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Regulation of the market for video content and distribution-response to white paper # 6

To The Honorable Fred Upton and the Honorable Greg Walden,

I am writing to support the position that provisions requiring local PEG access are still very necessary and warranted in the telecommunications act. It is especially important today, in a media environment that is increasingly fragmented, to provide citizens with the ability to follow government and community organization meetings on television and the internet, so as to encourage transparency and citizen involvement. The ability for the community, especially children, to have access to digital media training and tools that local PEG access stations provide is also critical to the future of an informed public.

My local PEG station's programming and services is a critical part of our rural community. Cable operators, especially those in markets like ours which are not open to competition, should be obligated to provide access through PEG to ordinary people.

Kate Fox
[REDACTED]

P.S. My local PEG access station is GNAT-TV. You can learn more about our innovative services and programs (over 20 locally produced programs, as well as video on demand and live streaming of local government meetings!), and our community media and training center, at www.gnat-tv.org.

January 16, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Chairman Upton and Chairman Walden,

Thank you for allowing me the opportunity to comment on your call to respond to White Paper #6: Regulation of the Market for Video Content and Distribution as part of your preparation in exploring updates to the Communications Act. I would like to focus my remarks on the benefits and future of Public, Educational, and Governmental (PEG) Access Channels.

Fall River Community Media (FRCMedia) has served as the public access television operation for the City of Fall River, MA since 2000. We continue to provide a voice for individuals and community-based organizations who call Fall River their home.

Our studio is located out of Bristol Community College, one of the largest public higher education institutions in the Commonwealth of Massachusetts. We parlay our work with the community with the educational mission of the College in preparing students in the communications field gain the experience needed to enter the workforce.

The advent of the Internet has opened up the opportunity to all to have a voice and share it with the world. But the existence of PEG provides an opportunity for residents and organizations to direct their voices directly to the people in their community over a medium which is still a primary communications resource for many.

FRCMedia has become an outlet for speech that may not always be popular to local politicians. This past year a group of residents launched a recall of our city's mayor and used the resources of FRCMedia to outline their reasons for doing so. The outcome of their efforts led to the recall of the mayor last month. Their message was powerful and their efforts may not have been successful without the use of the communications tools we have available at FRCMedia. The importance of PEG is sometimes taken for granted but should not be underestimated.

I hope you continue to see the positive impacts PEG channels provide our communities and will support its progress in future updates to the Communications Act. Thank you for your time.

Sincerely,
Keith Thibault
Director
Fall River Community Media/Bristol Community College



Response to Questions in the Sixth White Paper

"Video Policy"

by

**Randolph J. May, President, The Free State Foundation
Seth L. Cooper, Senior Fellow, The Free State Foundation**

and

Members of the Free State Foundation's Board of Academic Advisors:

**Michelle Connolly, Duke University
Richard A. Epstein, New York University Law School
Justin (Gus) Hurwitz, University of Nebraska College of Law
Daniel Lyons, Boston College Law School
Bruce M. Owen, Stanford University
Glen O. Robinson, University of Virginia Law School
James B. Speta, Northwestern University School of Law
Christopher S. Yoo, University of Pennsylvania Law School**

before the

Committee on Energy and Commerce, U.S. House of Representatives

January 23, 2015

Response to Questions in the Sixth White Paper

"Video Policy"

by

Randolph J. May, The Free State Foundation
Seth L. Cooper, The Free State Foundation
Michelle P. Connolly, Duke University
Richard A. Epstein, New York University Law School
Justin (Gus) Hurwitz, University of Nebraska College of Law
Daniel Lyons, Boston College Law School
Bruce M. Owen, Stanford University
Glen O. Robinson, University of Virginia Law School
James B. Speta, Northwestern University School of Law
Christopher S. Yoo, University of Pennsylvania Law School *

I. Introduction and Summary

Once more, we commend the Committee for undertaking its sustained review and update of the increasingly anachronistic Communications Act. As is the case with the other areas that Free State Foundation scholars have addressed in prior Responses, updating the Communications Act on video policy is especially timely. Since Congress passed the Cable Acts of 1984 and 1992 and the Telecommunications Act of 1996, the video service market has been marked by rapid technological changes and increased competitive activity, which undermines the case for direct regulation.

As the next section of this Response amply demonstrates, breakthrough innovation backed by heavy entrepreneurial investment has for the last twenty-five years drastically transformed the video market. These same forces will continue to reshape its landscape going forward. Convergence toward digital and Internet Protocol-based

* While the signatories to this Response are in general agreement with the views expressed in these comments, their participation as signatories should not necessarily be taken as agreement on every aspect of the submission. The views expressed should not be attributed to the institutions with which the signatories are identified.

services and cross-platform competition from competing delivery technologies now offer consumers video capabilities and content choices hardly imaginable when Congress last spoke on video policy in the 1990s. The legacy video regulatory apparatus rested on an excessive concern with perceived scarcity, monopolistic power, lack of distribution outlets, and minimal consumer choice. Legacy video regulations based on those outdated concerns now impose disparate regulatory treatments on competing services, which threaten to stifle future innovation. In short, video policy must be reformed to reflect the demonstrably changed market conditions detailed in the body of this Response.

Historically, constitutional permissibility of several aspects of legacy video regulations rested on upon claims of scarcity and monopoly-like conditions in the market. Given the magnitude of the continuous ongoing technological and competitive changes, the case for exempting video services, with minor exceptions, from the standard First Amendment protections given to other forms of speech has evaporated. Standard rule of law norms now impose on Congress an obligation to adopt a new approach to video services that satisfies these First Amendment constraints.

Replacement of the legacy video services regime should be part and parcel of a new Digital Age Communications Act. A new policy framework for video services should rely on the same fundamental principles applicable to other digital services. Bringing video into a single, unified framework for digital services furthers the goals of policy simplicity and harmony.

The Communications Act's ubiquitous public interest standard, under which so much of video regulation takes place, is unfit for a digital age market characterized by cross-platform video competition. That standard is under-protective of free speech

involving video content and other editorial decisions by video service providers. The FCC's open-ended authority to regulate "in the public interest" should be largely curtailed.

Transition of video to digital and IP-based platforms has rendered the current silo statutory structure obsolete and inequitable. And most of the distinct prescriptive rules for various types of video services are unsuited to competitive conditions in today's converged digital market for video services. Thus, for example, basic tier cable channel requirements, basic tier cable rate regulations, program carriage mandates, and must-carry and retransmission consent rules should be eliminated, albeit with reasonable transition periods to allow time for adjusting existing arrangements and protecting reliance interests. Regulation of video services would occur through case-by-case adjudications under the same competition-based standard that we articulated in our First White Paper Response. Thus, except in limited circumstances involving public safety, emergency notifications, or the like, regulation of video services, like other services, would be dependent on findings of consumer harm and market power.

Further, the FCC's existing authority over cable subscriber privacy and over DBS subscriber privacy should be transferred to the Federal Trade Commission. Consolidating consumer privacy for video services and other digital services within the FTC's jurisdiction would establish a consistent set of rules for data privacy policy, enforced by a single agency.

This clean-slate approach to video policy is consonant with the dynamic and competitive video services market that now exists and it is consistent as well with First Amendment objectives. To advance both consumer welfare and rule of law norms,

consistent with our recommendations regarding other communications services, Congress should integrate video services into a generally applicable framework that presumes regulation is unnecessary absent evidence of consumer harm and market failure.

II. Today's Video Market Is Dynamic and Competitive

Clearly, today's video market is far different from that of the early 1990s, when video programming subscribers enjoyed only a limited number of analog, standard definition channels, little or no interactive capabilities, and fewer pricing or premium content choices. At that time, the cable television industry was deemed "highly concentrated."¹ Most Americans had access to only one multichannel video programming distributor (MVPD), and cable operators controlled approximately 95% of the national market for video programming subscribership.² Those conditions prompted Congress to impose regulations intended to facilitate the entry of new programmers and media voices.

Much of the Cable Acts of 1984 and 1992 as well as the FCC's video regulations are based on these analog-era monopolistic assumptions about the video market. Recognizing the competitive, innovative nature of the video market is a necessary first step in bringing about legislative and regulatory reforms to reflect marketplace realities.

Dramatic advances in technology and market entry by cross-platform competitors have now led to proliferation of video capabilities and content choices for consumers. New technologies, new pricing options, and new sources of distribution now supply evolving consumer demands. In short, rapid innovation backed by heavy entrepreneurial investment has drastically transformed the video market of twenty-five years ago and continues to reshape its landscape.

¹ 1992 Cable Act, § 2(a)(4).

² See *In re* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Further Notice of Inquiry*, 26 FCC Rcd 14091, 14092-3, ¶ 2 (2011).

Snapshots of market share data often give a poor measure of market competitiveness, when market shares can rapidly change as consumer behavior responds to technologies and services, many of which are introduced by new market entrants. But even in static terms, readily available evidence reveals vibrant competitive market conditions with multiple choices for consumers. In the Commission's *Fifteenth Video Competition Report*, the agency found that by the end of 2013, cable providers represented only 55% of the more than 100 million households that subscribe to all multichannel video program distributors (MVPDs).³ Meanwhile, direct broadcast satellite (DBS) providers and "telephone" providers gained market share, claiming about 33.6% and 8.4% of all MVPD subscribers respectively.⁴ At the end of 2011, 98.6% of subscribers or 130.7 million households had access to at least three MVPDs, 35.3% or 46.8 million households had access to at least four, and some areas had access to as many as five MVPDs.⁵ The Commission's latest report is already a year-and-a-half old. Not surprisingly, trend lines suggest the market share of cable operators has slipped even further relative to DBS providers.⁶

³ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming *Fifteenth Report*, MB Docket No. 12-203 at ¶ 3 (released July 22, 2013), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0801/FCC-13-99A1.pdf.

⁴ *Id.* at ¶ 27.

⁵ *Id.* at ¶ 36.

⁶ See SNL Kagan, Press Release: "Multichannel Video Subscription Count Drops by a Quarter Million in 2013 According to Research by SNL Kagan" (March 19, 2014), at <http://www.snl.com/InTheMedia.aspx>. See also Roger Yu, Pay-TV providers see first yearly customer loss, USA Today (March 19, 2014), at <http://www.usatoday.com/story/money/business/2014/03/19/pay-tv-2013-customer-loss/6628769/>.

The emergence of telephone MVPDs like AT&T and Verizon marks one of the most significant changes in market competition for MVPD services.⁷ U-verse and FiOS services were available to one-third of U.S. homes by the end of 2010, accounting for approximately 6.5 million customers.⁸ By the end of June 2012, AT&T's U-verse and Verizon's FiOS services grew to 10.7 million subscribers combined.⁹ CenturyLink's Prism TV also continues to expand, boasting approximately 175,000 subscribers at the end of 2013.¹⁰ Within recent weeks, CenturyLink announced first that it reached a franchise agreement with Portland, OR, and second that it is pursuing an agreement in Minneapolis, MN.¹¹ By year's end 2013, Consolidated Communications Holding's had 110,000 subscribers to its IPTV service.¹² Moreover, entrants such as Google Fiber, certainly not lacking in financial resources, are also supplying consumers with new options, employing advanced infrastructure technologies and high-speed functionality.

If anything, it seems likely that the competitive capabilities and potential of former telephone companies in providing MVPD services have been underappreciated. Fiber-to-the-home services such as Verizon FiOS have been lauded for providing reliable video because of the enhanced speed, capacity, and other performance capabilities of their infrastructure. At the same time, moreover, "telephone" company MVPDs continue

⁷ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Fourteenth Report*, MB Docket No. 07-269, at ¶ 80 (released July 20, 2012) (citing SNL Kagan, *Cable TV Investor: Deals & Finance*, Oct. 31, 2011, at 7-8).

⁸ See SNL Kagan.

⁹ *Fifteenth Report*, at ¶ 3.

¹⁰ See SNL Kagan.

¹¹ See Mike Rogoway, "CenturyLink strikes cable TV deal with Portland; service could begin in 2015," *The Oregonian* (Dec. 20, 2014), at http://www.oregonlive.com/silicon-forest/index.ssf/2014/12/centurylink_strikes_cable_tv_d.html; Erin Golden, "CenturyLink looks to enter Minneapolis cable market," *Star Tribune* (Dec. 23, 2014), at <http://www.startribune.com/local/minneapolis/286634151.html>.

¹² See SNL Kagan.

to upgrade their systems through a network fiber build out, that reaches the neighborhood or network node. Expansion of fiber is being combined with innovative techniques for upgrading the capabilities of VDSL (very-high-bit-rate digital subscriber lines) lines. Such solutions parallel regular cable network systems upgrades, enabling “telephone” MVPDs to achieve speeds that are far more comparable to cable ISPs than to older DSL networks.¹³

Increasingly, consumers have gained access to high-capacity wireless broadband services capable of streaming HD and other video content. According to estimates of wireless mobile broadband network coverage cited in the FCC’s *Seventeenth Wireless Competition Report* (2014), as of January 2014, AT&T’s coverage extended to 98.7% of the population, Verizon Wireless’ to 96.9%, T-Mobile’s to 92.1% and Sprint’s to 89.8%.¹⁴ Those numbers do not include regional or local wireless broadband providers, such as U.S. Cellular, C-Spire, and Ntelos.

Next-generation wireless network upgrades continue to exhibit increased speeds and capacity, making wireless an increasingly viable competitive alternative – indeed a potential substitute for – wireline broadband. For most major wireless broadband providers, average LTE speeds range between 30 and 40 Mbps,¹⁵ enabling a wide range of video viewing functionalities. With regard to video, about half of all broadband

¹³ See, e.g., Reply Comments of ADTRAN, Inc., Applications of Comcast Corporation, Time Warner, Inc., Charter Communications, Inc., and Spinco To Assign and Transfer Control of FCC Licenses and Other Authorizations, MB Docket No. 14-57 (Nov. 7, 2014), at <http://apps.fcc.gov/ecfs/document/view?id=60000979824>.

¹⁴ *In re* Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Seventeenth Report*, WT Docket No. 13-135 (released Dec. 18, 2014)(Chart VI.B.1 – Estimated Mobile Wireless Coverage in the U.S. by Provider, Jan. 2014).

¹⁵ See, e.g., Lynn La, “4G LTE Showdown: How Fast is Your Carrier?” *CNet* (Aug. 5, 2014), available at: <http://www.cnet.com/news/4g-lte-showdown-how-fast-is-your-carrier/>.

consumers access mobile TV apps each month; 17% use mobile TV apps weekly; and 16% use mobile TV apps daily.¹⁶ These numbers are certain to increase, as wireless broadband providers are unveiling new technologies that will enhance wireless video viewing capabilities. For instance, Verizon and AT&T plan to launch their LTE multicast video services in the near future. “LTE Multicast” promises to deliver live TV signals wirelessly to mobile devices more efficiently than unicast delivery, because multiple users can watch the same multicast stream as it is delivered from a single cell site.¹⁷ Sprint is deploying its enhanced LTE service, with peak download speeds of 60 MBps.¹⁸

Over-the-air broadcast TV continues to offer consumers a further option, albeit now in HD and with multi-casting capabilities. While recent estimates of audience size suggest that the number of people who rely exclusively on broadcast TV is down substantially from the early 1990s, today’s consumers readily combine broadcast TV viewing with low-cost alternatives such as the broadband-enabled online video distributor (“OVD”) services like Netflix.¹⁹ Broadcast TV mobility options are also available.²⁰

¹⁶ TGD, Press Release: “Half of Adult Broadband Users Now Engage Mobile Video Apps at Least Once a Month” (Ju. 23, 2014), available at: <http://tdgresearch.com/tdg-half-of-adult-broadband-users-now-engage-mobile-video-apps-at-least-once-a-month/>; *Id.* (“39% of adult broadband users engage mobile video apps on a portable computer, compared to 30% who do so using a tablet, and 22% that do so using a smart phone”).

¹⁷ Jeff Baumgartner, “Verizon CFO: LTE Multicast ‘Pivotal’ to Mobility,” *CNet* (Aug. 12, 2014), available at: <http://www.multichannel.com/news/technology/verizon-eyes-2015-lte-multicast-video/382678>; <http://www.lightreading.com/video/mobile-video/verizons-multicast-lte-video-to-arrive-in-2015/d/d-id/710057>; Jeff Baumgartner, “AT&T Plays Ball With LTE Broadcast,” *CNet* (Jan. 8, 2015), at <http://www.multichannel.com/news/technology/att-plays-ball-lte-broadcast/386750>.

¹⁸ Sprint, Press Release: “Sprint Spark” (June 24, 2014), available at: <http://newsroom.sprint.com/presskits/sprint-spark.htm>.

¹⁹ See Christopher S. Stewart, “Over-the-Air TV Catches Second Wind, Aided by Web,” *Wall Street Journal* (Feb. 21, 2012), at <http://www.wsj.com/articles/SB10001424052970204059804577229451364593094>.

²⁰ See, e.g., George Winslow, “CES: RCA to Launch Mobile DTV-Capable Tablet,” *Broadcasting&Cable* (Jan. 4, 2013), at <http://www.broadcastingcable.com/news/technology/ces-rca-launch-mobile-dtv-capable-tablet/49701?nopaging=1>.

Indeed, the OVD market segment has also emerged as a disruptive force in the video market. By the end of 2013, Netflix had 44 million customers,²¹ compared to 21.7 million Comcast customers and 11.4 million Time Warner Cable customers.²² OVDs have made their programming available on smartphones, tablets, and laptops as well as new connected devices like Roku, Apple TV, and game consoles like Xbox 360, PS3, and Wii.

A recent survey indicates that more than a third of TV households subscribing to MVPD services also subscribe to Netflix.²³ Those numbers suggest that video consumers value OVDs as a complement or add-on to MVPD services. Individual cable and broadcast networks have also embraced streaming services. CNN, ESPN, MTV, and ABC are among the networks that offer their content by live stream or on-demand.

On the other hand, OVDs also fill the role of disruptive competitor to MVPD services. According to one report, during the third quarter of 2014, “homes receiving programming solely through broadband service reached 2.57 million, or 3 percent of total TV households.”²⁴ Also, nearly half of households that do not subscribe to pay-TV services have Netflix. Additional OVD or over-the-top (OTT) services, relying exclusively on broadband connections, are also being launched. These include Dish’s Sling TV – limited number of cable channels at discount price – and HBO’s direct-to-

²¹ Victor Luckerson, “Netflix Mulls Price Tiering as Subscriber Numbers Soar,” *Time* (Jan. 22, 2014): <http://business.time.com/2014/01/22/netflix-number-of-subscribers-grows-greatly-in-q4/>.

²² William Alden, “The Comcast-Time Warner Deal, by the Numbers,” *New York Times* (Feb. 13, 2014): http://dealbook.nytimes.com/2014/02/13/the-comcast-time-warner-deal-by-the-numbers/?_php=true&_type=blogs&_r=0.

²³ <http://www.mediapost.com/publications/article/241028/dvr-service-soars-in-us.html?edition=79069>

²⁴ USTelecom, “Broadband Spurs Increased Digital Video Viewing,” *USTelecom Blog* (Dec. 11, 2014), at <http://www.ustelecom.org/blog/broadband-spurs-increased-digital-video-viewing>.

consumer service.²⁵ Of course, consumers can also make stand-alone purchases of movies, TV episodes, or TV series, or certain video channels through streaming apps and mobile platforms like Apple’s iOS, Google’s Android, and Amazon Prime.

Today’s video market is also characterized by the ongoing replacement of analog systems with digital; the rapid expansion of high-definition broadcasting and TV ownership; the rise of cloud-based user interfaces, digital video recorder (DVR) options, video-on-demand functions, as well as TV-Everywhere and other mobility capabilities.²⁶ The Commission’s *Fifteenth Video Competition Report* notes that, as of 2012, more than 74% of households have sets capable of receiving digital signals, including HD signals.²⁷ 4K ultra-HD TV sets and content are now being marketed to consumers.²⁸

Streaming apps and mobile platforms like Apple’s iOS and Google’s Android provide consumers access to video programming offered by cable operators Comcast, Cox, Charter, Cablevision, and Bright House. Comcast and Time Warner Cable programming can be accessed by Microsoft’s Xbox 360. Time Warner Cable provides its subscribers access to video-on-demand services through devices like Roku and Samsung Smart TVs.

Non-cable operators like DirecTV, DISH, AT&T, and Verizon have also made

²⁵ See, e.g., David Carnoy, “Dish’s new Sling TV Internet TV service starts at \$20, features ESPN, Disney Channel, CNN, TNT, and other channels,” *CNET* (Jan. 5, 2015), at <http://www.cnet.com/news/dish-launches-20-sling-tv-streaming-video-service-with-channel-lineup-that-includes-espn-disney/>; Mike Farrell, “OTT’s Real Impact Eludes Nets – and Ops,” *Multichannel* (Dec. 15, 2014) at <http://www.multichannel.com/news/ott/ott-s-real-impact-eludes-nets-and-ops/386284>.

²⁶ George Winslow, “TV Everywhere Video Consumption Doubles,” *Broadcasting & Cable* (Dec. 16, 2014), at <http://www.broadcastingcable.com/news/technology/tv-everywhere-video-consumption-doubles/136435>.

²⁷ *Fifteenth Report*, at 5, ¶ 7.

²⁸ Mark Hachman, “We saw lots of 4K TVs at CES. 4K content? Not so much.” *TechHive* (Jan. 14, 2015), at <http://www.techhive.com/article/2867546/we-saw-lots-of-4k-tvs-at-ces-4k-content-not-so-much.html>.

their content available through iOS and Android mobile platforms and devices. DirecTV offers its programming through DIRECT Ready TVs and Samsung TVs. Additionally, DISH and DirecTV offer their programming through smart TVs that do not require a set-top box or other receiver.

This survey is necessarily far from comprehensive. Additional options become available almost weekly, if not daily. But the dramatic technological and competitive advances in video services witnessed in the last quarter-century are abundantly and indisputably documented. Video policy must be reformed to reflect these emphatically changed market conditions.

III. First Amendment Constraints Should Prompt Video Policy Reform and Guide Policy Implementation

As indicated above, a significant number of statutory restrictions on video services and the Commission's regulations of such services were premised on a now primitive 1990s snapshot of the video market. The constitutional permissibility of several aspects of those laws and regulations similarly rested upon claims of monopoly-like conditions in the market.

Given the magnitude of technological and competitive changes of the last quarter-century, the case for exempting video services from First Amendment protections accorded other forms of speech has evaporated. Rule of law norms impose an obligation on Congress to establish a new approach to video services that satisfies First Amendment standards. In other words, in light of today's video market conditions, conformity to First Amendment requirements should dictate a light-touch approach that covers only real, not imagined, market failures.

In the words of the Supreme Court, “leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say.”²⁹ Courts have recognized First Amendment protections against compelled speech in the context of modern media communications.³⁰ Yet a variety of existing regulations, in fact, do tell video service providers what they must say, overriding editorial decisions with government proscriptions. For instance, decades-old must-carry regulations require MVPDs to carry broadcast TV content not of their own choosing, curtailing MVPDs’ discretion, in their role as publishers, to determine channel lineups and arrange channel tiers.

Program carriage regulations designed to protect video programmers unaffiliated with MVPDs from “discrimination” amount to forced-speech mandates by substituting the government’s judgment concerning program channel selection and lineup placement for that of an MVPD. Program access regulations effectively require vertically integrated MVPDs, operating in their role as publishers, to act as speakers in settings not of their own choosing by making their programming available to competitors on terms and conditions that are subject to second-guessing by the FCC. Agency-defined “must-have” categories of programming, such as sports networks, designed for purposes of enforcing program access requirements verge on content-based speech controls. And “leased access” regulations, which require MVPDs, again operating in the role of publishers, to make available certain amounts of their channel capacity to third parties subject to government-set rate controls, deprive MVPDs of editorial control over any video programming on the leased channels.

²⁹ *Rumsfeld v. CAIR*, 547 U.S. 47, at 61 (2006).

³⁰ *See, e.g., Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241 (1974) and *Pacific Gas & Electric Company v. Public Utility Commission*, 475 U.S. 1, 9 (1975)

To preserve its regulatory power, the FCC has for many years relied upon rationales that have always been analytically suspect and are today increasingly factually unsupportable. Most notably, in *Red Lion Broadcasting Co. v. FCC* (1969), and *Turner Broadcasting System, Inc. v. FCC* (1994), the existence of so-called spectrum “scarcity” and cable monopoly “bottlenecks” were asserted to excuse selectively applied regulations restricting the free speech of TV broadcasters and cable providers.³¹ Many of those restrictions imposed on cable video services have subsequently been extended to other MVPD services, including satellite video providers. In light of these recent developments, it is not surprising that federal courts have challenged both the scarcity and bottleneck rationales for pervasive regulation of speech in video services media.³² Congress should take this disconnect into account when it revises its rules for video services.

Courts typically defer to both Congress and federal agencies whenever public policy depends upon judgments involving marketplace economics. While piecemeal judicial dismantling of the legacy video regulatory apparatus might vindicate free speech rights in today’s new video market conditions, it could also introduce unintended policy

³¹ *Red Lion*, 395 U.S. 367; *Turner Broadcasting*, 512 U.S. 622.

³² *See Comcast v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009) (“the record is replete with evidence of ever increasing competition among video providers...Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992”); *Comcast v. FCC*, 717 F.3d 982, 994 (D.C. Cir. 2013) (Kavanaugh, J., concurring). (“In today’s highly competitive market, neither Comcast nor any other video programming distributor possesses market power in the national video programming distribution market”); *Fox v. FCC*, 613 F.3d 317, 326-327 (2d Cir. 2010) (recognizing dramatic changes in technology and competition but concluding it is bound by U.S. Supreme Court precedent regarding spectrum scarcity); *Time Warner Cable v. Hudson*, 667 F.3d 630 (5th Cir. 2012) (concluding that the First Amendment prohibits modern speech media from being subject to selective, discriminatory regulations and striking down certain state video franchise requirements). On other occasions, federal circuit courts have concluded that the MVPD market characterized by bottlenecks when the Cable Act of 1992 was passed is now “mixed,” with competition varying according to geographic region. *See Cablevision v. FCC*, 597 F.3d 1306, 1314 (D.C. Cir. 2010); *Cablevision v. FCC* 649 F.3d 695, 712 (D.C. Cir. 2011); *Time Warner Cable v. FCC*, 729 F.3d 137 (2d. Cir. 2013).

glitches and uncertainties that a uniform approach to all video market segments and providers could avoid. Congress should be the first mover in establishing a new framework for video services. Moreover, respect for First Amendment rights should lead Congress to avoid regulation that abridges free speech. It should also spur Congress to remove outdated regulatory burdens on speech in light of changed marketplace conditions.

Taking the First Amendment seriously as a policymaking guide means authorizing government intervention in the video market only where such intervention demonstrably serves a compelling government interest while burdening protected speech as little as possible. It also means carefully tailoring such intervention to employ the least restrictive means possible for this limited class of objectives. And it means regularly revisiting such regulatory interventions to ensure that they still serve a compelling government interest, with repeal as the default option. The new policy framework for today's competitive, convergent, digitally-driven media marketplace should provide equal speech protections to all video services, regardless of the media or technology used. Regulation is warranted only after a showing of a demonstrable and compelling market failure based on specific technical and market characteristics.³³

IV. A Market-Power Framework for Video Services in the Digital Age

In the Free State Foundation's First Response to the Committee, we proposed the following general framework: (1) a clean slate approach to updating the Communications Act that would (2) eliminate the existing silo regime that subjects different providers of similar services to different regulatory burdens, (3) largely eliminate the overly-broad

³³ See Randolph J. May, *Charting a New Constitutional Jurisprudence for the Digital Age*, 3 CHARLESTON L. REV. 373 (2009); Christopher S. Yoo, *The Rise and Demise of the Technology-Specific Approach to the First Amendment*, 91 GEO. L. J. 245 (2003).

public interest standard for regulating services; (4) limit the FCC's authority to adopt broad anticipatory *ex ante* rules and confine primarily its actions to an *ex post* process based on adjudication of individual complaints alleging specific abuses of market power and consumer harm; and (5) transfer certain functions from the FCC's jurisdiction to the FTC.³⁴ We urged that these framework principles form the basis for a new Digital Age Communications Act. Replacement of the legacy video services regime should be part and parcel of that reform so that video services are integrated into the same regulatory framework.

First, inclusion of video within the scope of a new Digital Age Communication Act is warranted by the transition of video from largely static, one-way, analog services to increasingly interactive, digital, IP-based services. Generally, the same technological and competitive principles relevant to other advanced telecommunications services are also relevant to video services.³⁵ In key respects, video may be regarded as a digital app in the broadband ecosystem. Bringing video into a single, unified framework for digital services furthers the goals of policy simplicity and harmony.

Second, transition of video to digital and IP-based platforms has rendered the silo statutory structure obsolete. With competition primarily taking place across multiple digital platforms employing various technologies, and often a mix of technologies, consumers enjoy numerous choices of content providers and services. It is precisely this kind of competition among platforms for video services that has significantly reduced,

³⁴ Free State Foundation Response to Questions in the First White Paper, "Modernizing the Communications Act," (Jan. 31, 2014), at 4-5:
http://www.freestatefoundation.org/images/Response_to_Questions_in_the_First_White_Paper_013114.pdf.

³⁵ We recognize that circumscribed cases involving public safety or emergencies may present exceptions to application of the general principles.

and in most areas eliminated, concerns about market power and consumer harm based on scarcity, bottlenecks, or lack of alternative outlets. Different platforms for delivering video services should no longer be subject to disparate regulations simply because they fit 1990s conceptions of how different silo should operate. Regulations should no longer be geared toward managing the technical or business model particulars of broadcast TV services, cable services, or DBS services through broad prescriptive rules. Nor should Congress merely supplement the existing silo regime with new silo categories for online video distributors, mobile broadband-enabled video, or the like. Instead, Congress should replace the legacy video regulatory regime with a technologically neutral framework applicable to video services that reflects the presence of cross-platform competition.

Third, the Communications Act's public interest standard is unfit for the digital age marketplace, and it should be largely dropped.³⁶ By virtue of such an indeterminate delegation of authority, the FCC continues to enjoy an extraordinary degree of discretionary power over editorial content decisions involving broadcast TV services and MVPD services, even as technological advancements have transformed spectrum into a more fungible, dynamic resource. Public interest regulation of video services relying on spectrum is no longer justifiable in light of competitive and technological developments. Continued regulation of video services under this standard, and the potential reinstatement of older regulations, such as the Fairness Doctrine, that have been removed but for which agency authority still exists, risks harming consumers by selectively burdening some media outlets and by discouraging the development of innovative business models.

³⁶ See Randolph J. May, *The Public Interest Standard: Is It Too Indeterminate to Be Constitutional?*, 53 FED. COMM. L. J. 427 (2001).

The public interest standard is so vague that it easily can be criticized for conferring too much discretion on the agency without sufficient direction from Congress.³⁷ In the video context, the public interest standard poses acute First Amendment problems. Over the years, the FCC has invoked the public interest delegation to impose content-based regulations on broadcast TV services. Even putting aside doubts whether such content regulation was ever justified, technological advancements and competitive marketplace developments provide no persuasive rationale for subjecting broadcast TV services to a greater degree First Amendment restriction compared to other video services and media outlets. A First Amendment-compatible approach would put broadcasters, as well as other digital media purveyors, including cable, satellite, wireless, and broadband Internet providers, on par with the First Amendment protections traditionally enjoyed by the print media.³⁸

Fourth, prescriptive rules for various types of video services are unsuited to competitive conditions in today's digital market for video services. A simplified, clean slate approach should replace those rules with a case-by-case adjudicatory process tied to actual findings of market power and consumer harm. In the Free State Foundation's First Response to the Committee, we recommended Congress adopt "a competition-based standard that directs the FCC generally to undertake an antitrust-like economic analysis when it engages in regulatory activity that is subject to its jurisdiction."³⁹ We elaborated

³⁷ See Randolph J. May, *The Public Interest Standard: Is It Too Indeterminate to Be Constitutional?*, 53 FED. COMM. L. J. 427 (2001).

³⁸ See Randolph J. May, *Charting a New Constitutional Jurisprudence for the Digital Age*, 3 CHARLESTON L. REV. 373 (2009); Christopher S. Yoo, *The Rise and Demise of the Technology-Specific Approach to the First Amendment*, 91 GEO. L. J. 245 (2003).

³⁹ FSF's First Response, at 12.

on the market power standard and accompanying process for case-by-case adjudication in the Free State Foundation's Third Response to the Committee:

Regulatory prohibitions and sanctions under the new Communications Act should generally be accomplished through focused adjudicatory proceedings. The filing of individual complaints, whether by consumers or market rivals, should contain specific allegations of abuse of market power. The burden should rest on complainants to demonstrate the need for regulatory intervention by clear and convincing evidence of anticompetitive conduct and its likely resulting harm. Any regulatory intervention by the FCC should thus normally be tied to a finding of a threat of market power abuse and a concomitant threat of consumer harm. Furthermore, due to the dynamism that characterizes the modern communications marketplace, these allegations of market failure should show more than some transitory failure that can be met by targeted responses of other market participants. Therefore, any allegations of market failure should be "non-transitory" in order to trigger a Commission response.⁴⁰

This same market power framework and case-by-case approach should apply to video services, replacing the silo approach and public interest standard governing video services today. In other words, the existing legacy video regulatory apparatus that presumes regulatory intervention is the norm and its sector-specific or technology-specific rules regarding video content delivery should be eliminated. A new framework should be established that is applicable all video services in the digital marketplace, the organizing principle of which is a rebuttable presumption that runs in favor of marketplace freedom and against regulatory intervention in the video market.

In establishing a market power standard for video services, one modest agency precedent for Congress to consider is the FCC's *Program Access Order* (2012).⁴¹ In that

⁴⁰ Free State Foundation Response to Questions in the Third White Paper, "Competition Policy and the Role of the Federal Communications Commission" (June 13, 2014), at http://www.freestatefoundation.org/images/Response_to_Questions_in_the_Third_White_Paper_061314.pdf.

⁴¹ *In re* Revision of the Commission's Program Access Rules, *Report and Order and Further Notice of Proposed Rulemaking* ("Program Access Order"), 27 FCC Rcd. 12619-37 (2010).

order, the FCC replaced its ban on exclusive contracts by vertically-integrated cable programmers with a rebuttable presumption of market competitiveness, albeit with extra qualifications attached. A market power analytical framework could build in part on the approach adopted in the *Program Access Order* by employing a more straightforward deregulatory presumption to apply to all video services.

Congress can also draw upon useful insight offered in a judicial context. Section 616 of the 1992 Cable Act contains program carriage requirements restricting MVPD conduct that will “unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage.” In *Comcast v. FCC* (2013), involving a program carriage complaint filed by the Tennis Channel, Judge Brett Kavanaugh interpreted Section 616 in light of antitrust law’s understanding of the term “unreasonably restrain”:

Because Section 616 incorporates antitrust principles and because antitrust law holds that vertical integration and vertical contracts are potentially problematic only when a firm has market power in the relevant market, it follows that Section 616 applies only when a video programming distributor has market power in the relevant market. Section 616 thus does not bar vertical integration or vertical contracts that favor affiliated video programming networks, absent a showing that the video programming distributor at least has market power in the relevant market.⁴²

Significantly, Judge Kavanaugh also addressed the First Amendment implication of the government overruling video content and channel lineup decisions made by video programming distributors. He concluded that government interference with the editorial discretion of video programming distributors is only permissible where such distributors possess market power in the relevant market. Judge Kavanaugh’s antitrust-based reading

⁴² 717 F.3d 982, 991 (D.C. Cir. 2013) (Kavanaugh, J., concurring).

of Section 616 was thereby bolstered by the constitutional avoidance canon, whereby a statute susceptible to more than one reasonable construction is interpreted to avoid raising constitutional problems. In that case, First Amendment protections for editorial decisionmaking related to video programming tipped the scales in favor of free speech in the absence of a market power.

Fifth, jurisdiction over consumer privacy matters related to digital video services should be turned over to the Federal Trade Commission (FTC). As part of that reform, existing FCC authority over cable subscriber privacy (Section 551) and over DBS subscriber privacy (Section 338 of the Satellite Home Viewing Improvement Act) should be transferred to the FTC.

In the Free State Foundation's First Response to the Committee, we stated:

[W]ith regard to any regulatory oversight relative to the protection of privacy or data security, even though the FCC presently has some jurisdiction in these areas, for the most part, it would be preferable to consolidate such jurisdiction in the FTC. The types of consumer protection issues most likely to arise with regard to privacy and data security are at the core of the FTC's institutional expertise. If jurisdiction over these type of matters – matters outside of the purview of traditional economic regulation of service providers – is transferred to the FTC, it is much less likely that telecom and cable services providers, on the one hand, and, say, Facebook or Twitter, on the other, will end up subject to disparate regulations in these areas.⁴³

Simple and consistent rules concerning privacy of personal data are the most consumer-friendly and what consumers in converging digital markets increasingly expect. There is no basis to presume consumers want different sets of basic data privacy protections that depend upon whether they are doing business with, say, a cable provider, a DBS provider, or an OVD. Nor is there any basis in thinking consumers want different sets of data privacy protections from a single provider of digital services, depending on

⁴³ FSF First White Paper Response, at 17.

whether video, voice, or other data applications are involved. Consolidating consumer privacy for video services along with other digital services within the FTC's jurisdiction would establish a common enforcer and common set of rules for data privacy policy, providing the consistency to consumers of digital services.

V. Transitional Measures for Implementing a New Framework for Video Services

Successful implementation of a market-based policy approach to video that relies on antitrust-like analysis in case-by-case adjudication will undoubtedly require various periods of transition from the current disparate regulatory requirements in order to protect established reliance interests. To ensure the eventual end to sector-specific or provider-specific regulations based on outdated snapshots of the video market and the Communications Act's antiquated silo regime, Congress should require the Commission to adopt a series of specific sunset dates by which time legacy video mandates are to be eliminated.

Sunset date announcements will crystallize the expectations of video service providers as well as video content owners, giving them a reasonable transitional period to adjust technical and business operations to a more market-oriented approach and to take into account the adjustment of existing arrangements.

Where the Communications Act grants the FCC rulemaking authority over video services that has long since gone dormant or where the FCC has already repealed relevant regulations, no transitional provisions should apply. For instance, elimination of FCC authority to reinstitute cable leased access regulations or broadcasting rules such as network non-duplication rules, syndication exclusivity rules, or sports blackout rules should be immediate. To the extent that Congress adopts the approach suggested here,

which includes jettisoning basic tier cable channel requirements, basic tier cable rate regulations, program carriage mandates, and must-carry and retransmission consent rules, it will also need to consider changes in the law in related areas, such as copyright law, where the compulsory license should be reconsidered.

VI. Conclusion

As the Committee moves forward with its review and update process, including the evaluation of competition policy, we urge it to carefully consider and implement the views expressed in this Response, as well as the previous Free State Foundation Responses. We look forward to continuing to play a constructive role in this process leading to a much-needed update of the Communications Act.

January 23, 2015



The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Chairman Walden:

General Communication Inc. (GCI) began as a competitive entrant in the Alaska long distance market in 1979 and since has grown into the largest communications provider in the state, offering mobile voice and data, residential and business internet access and cable television, as well as operating several broadcast television stations. GCI, therefore, is deeply interested in contributing to your ongoing efforts to modernize the Communications Act. As a company that operates both cable systems and broadcast stations in Alaska, we can offer a valuable perspective on the regulation of the video programming market, and the need for competitive and technical neutrality and consumer-facing transparency.

As we have said in response to the Committee's previous white papers, technological and competitive neutrality are core principles that the Committee must keep at the center of any Communications Act update. The consumer-driven market, not Congress or the FCC, should determine which technologies and companies succeed or fail. As is often said, our laws should not pick winners but rather should allow industry to compete for customers through technological innovation, service differentiation, and pricing.

Current law often regulates based on the underlying network or legacy business of a service provider rather than the type of service being offered to the consumer, which creates anticompetitive and even nonsensical results. In the multichannel video programming distributor (MVPD) marketplace, for example, the Act and the FCC treat cable operators, direct-broadcast satellite (DBS) providers, and telecommunications firms differently, even though they provide substantially the same video services to consumers. True competition and a level playing field require that the Act and the FCC regulate like services similarly.

With the evolution of over-the-top (OTT) video offerings, the law must remain neutral in its treatment of services that consumers might view as substitutes for one

another, extending where appropriate the rights and responsibilities of MVPD operators – such as program access rights and equal employment opportunity obligations.

Vibrant competition depends not only on competitive and technical neutrality, but also on a level of transparency that allows consumers to make informed choices. The lack of transparency when it comes to the prices charged for channels imbalances the competitive marketplace, makes it difficult if not impossible for appropriate exercise of regulatory oversight when markets aren't functioning properly, and leaves consumers in the dark about the source of increasing cable programming costs. As an independent cable provider, GCI has seen firsthand how nondisclosure clauses in retransmission and programming agreements are used to gain unfair competitive advantage and impose noneconomic outcomes, resulting in the upward spiral of rates to consumers. As the entity with the consumer relationship, small cable providers like GCI are left to face the ire of the public due to circumstances that are largely outside of their control. This ultimately impedes small providers, as competitors in the market, in their ability to invest and innovate, which in turn limits their ability to provide consumers with services at reasonable rates. The Committee should address these issues and consider ways to rationalize the wholesale market for programming.

The Local Choice proposal would replace the current retransmission consent system with a transparent pass-through mechanism. This idea was discussed as part of the STELA reauthorization in late 2014 and could solve many of the issues we have raised. By promoting competition with regard to content and price by broadcasters, the Local Choice concept would allow the market to reflect the actual demand for and value of content. Following GCI's recent entry into the broadcast market through a subsidiary, we relish the opportunity to compete on these additional fronts. The same considerations apply to non-broadcast programmers, who tie high-demand channels to less sought-after channels, driving up consumer prices and concealing from consumers the true cost of programming. Transparency would also help to remove the persistent threat of content blackouts caused by failed negotiations between a programmer and MVPD.

GCI appreciates the opportunity to engage with your effort to modernize the Communications Act, and we look forward to working further with the Committee and Subcommittee.

Sincerely,



Tina Pidgeon
General Counsel & Senior VP, Government Affairs

[REDACTED]

From: John Gibson [REDACTED]
Sent: Friday, January 23, 2015 11:03 PM
To: CommActUpdate
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

The Honorable Fred Upton and Honorable Greg Walden;

I write this brief letter to address the question posted below, which it is my understanding is one of the considerations of the possible new changes to the Communication Act.

"Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?"

I feel that these provisions are very warranted in the Internet video age; simply put, PEG access gives citizens of their communities or students of universities/educational institutions one more avenue for telling their stories, and expressing their right to free speech. And while it is very true that the Internet video age has democratized the process even more, allowing anyone with a webcam, computer and reliable connection to post videos and share ideas, PEG centers are still a great bastion in the community for those people who don't have these luxuries. And, with the educational opportunities afforded by many centers, citizens are able to further hone and refine the ability to tell the stories that matter most to them.

The Internet has become a great asset to citizen producers, but the need for PEG access is still great, as it does provide that additional opportunity to target and reach out to the direct community that that citizen producer is involved in. I have kept this letter of support brief, because I believe you will no doubt hear much more eloquent and better arguments of support from others. But, I at least wanted to take a few moments to express my support for PEG access as it stands.

Thank you, and have a wonderful day,
John

[REDACTED]

From: Mark Moffett <[REDACTED]>
Sent: Thursday, January 22, 2015 12:10 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

GNAT ~ Greater Northshire Access Television ~ P.O. Box 2168, Manchester Center, VT 05255 ~ 802-362-7070

The Honorable Fred Upton
2183 Rayburn House Office Building Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building Washington, DC 20515

Transmitted on *January 22, 2015*, by email to: CommActUpdate@mail.house.gov **Re:** Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear Members of the House Energy and Commerce Committee,

Our PEG Access center, *GNAT*, openly and equitably serves all the residents, schools, municipalities and nonprofits in our region. Your Committee has questioned whether PEG channels is a community service that still serves any need now that the Internet is so widespread, and our answer to that is a very strong “yes.”

We are one of 25 PEG Access Centers in Vermont, the most rural of all the states. Because the few broadcast TV channels we have can’t cover the state as well as we can, folks here rely on us to provide hyper-local coverage of town and school meetings, community and student events, lectures, performances and a whole host of other types of programming. *We offer: State of the Art Media Technologies and Studio Facilities; Training Programs; Youth Programs; Community Bulletins & Video Announcements; Online Video-on-Demand; Media Transfer Services. Based on our involvement in our community—and thanks to volunteers from our community—we recently won the Alliance for Community Media 2014 National Overall Excellence Award.*

We strongly encourage your Committee to help PEG Access, our channels and our funding survive and thrive by incorporating PEG into Internet broadband legislation, as it has been allowed to do under the Cable Communications Act of 1984.

Since *1995*, we have been not only meeting our primary obligation to cable television subscribers with 24/7 programming on our 5 cable TV channels, but also serving everyone in our region by making available the free non-commercial use of our studio facilities, free and low-cost training, equipment lending, and distribution of local, original video productions on the Internet.

Most importantly, anyone in our region, in Vermont or even around the world who has Internet access can see our programs through links on our website: <http://www.gnat-tv.org>. We invite you to go there to see the quality and breadth of our community service.

We have already embraced the Internet as an essential partner in serving our community, but increasingly we will need to rely on it more to replace the funding we’ll be losing from the cable operator’s TV revenues as more and more people watch their video on the Internet and drop their cable TV subscriptions. Please maintain PEG Access funding and distribution on the Internet and all commercial video service providers.

Sincerely,

Tammie Reilly, Executive Director

cc: The Honorable Peter Welch
c/o Patrick.Satalin@mail.house.gov

Mark Moffett
Office Coordinator
(on behalf of Tammie Reilly, Executive Director)
GNAT-TV
802-362-7070
www.gnat-tv.org

[REDACTED]

From: Mike Gray [REDACTED]
Sent: Thursday, January 22, 2015 5:46 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribtuion - Response to White Paper #6

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Upton and Walden,

Please reconsider discontinuing funding for public, educational or governmental programming.

Public access television stations play a vital role in providing educational material in our communities that people may not otherwise easily access. For example, seniors typically don't search for programming and don't have the technical expertise to connect a computer to their television sets.

It's important to have video media outlets available in addition to online resources like YouTube, and commercial stations don't choose to broadcast the type of programming created by local producers.

For example, I produce a public access television show called Financial Insider Weekly that brings educational information from local experts to our San Francisco Bay Area audience. The show is broadcast on eleven local public access stations. We cover topics like explanations of health care reform, duties and responsibilities of an executor and a trustee, relationship issues relating to money, how to invest in real estate, how to make alternative investments using Roth and IRA accounts, life insurance basics, investing in turbulent times, and many more. You can find past episodes at www.financialinsiderweekly.com.

This show wouldn't exist without the production facilities provided by my local public access television station.

If you haven't already, you should see this YouTube video of Fred Rogers testifying before the U.S. Senate about the importance of Public Television. It's a great reminder.
<https://www.youtube.com/watch?v=yXEuEUQIP3Q>

Best wishes,

Michael C. Gray
[REDACTED]

[REDACTED]

From: Hadley Public Access TV [REDACTED]
Sent: Friday, January 23, 2015 12:12 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Hadley Public Access Television

Providing public access television to the Town of Hadley since 1990

**Hadley Town Hall
100 Middle Street
Hadley, MA 01035**

January 22, 2015

Dear Members of the House Energy & Commerce Committee,

I am writing to you in support of continued funding from cable TV companies for public access television stations.

You wrote in White Paper #6 dated December 10, 2014 that one of the issues that you will be focused on as part of the updating of the Telecommunications Act is whether Public Access Television is necessary in "the era of the Internet". I strongly feel that it is. If public access television type programming (especially local government meetings) were relegated to the Internet that would lock out the elderly and others who are not computer literate as well as those who cannot afford high-speed internet access from viewing public access television. A high-speed Internet connection is necessary to view videos online.

If cable TV companies were no longer required to provide funding for public access television, most public access television facilities would have to close, particularly those that are departments within the municipal government of the city or town that they serve, such as the one that I run. Most municipalities now-a-days operate on barebones budgets, sometimes even less than barebones. Very, very few municipalities can afford to absorb the cost of running a public access TV station into their operating budgets. There is really no financial need to cease requiring cable TV companies to fund public access television as it is definitely not a financial burden for cable TV companies to do so. 100% of the funding that they provide is passed on to their cable subscribers in the form of a monthly franchise fee (usually two or three dollars). Not one penny of the funding they provide comes out of their pockets.

The most important thing about public access television is that it gives the common man a soapbox that he or she would not otherwise have. Public access television provides the equipment and training that he or she would need to get their message out to the public in his or her local area at minimal or no cost to them.

Allow me to give you an example of how public access television can affect people's lives in a positive manner. A couple of years ago there was a professor at a college in the Boston area really loved to

teach. Unfortunately, he had contracted cancer and could no longer do so. Under doctor's orders, he was not allowed to be around large groups of people because his immune system had become compromised due to the radiation and/or chemotherapy treatments he was receiving for his cancer. Instead of giving up teaching, he went to his local public access television station and hosted an educational program called *On Your Computer*. It was targeted at people who have very little experience in the operation on a PC computer. Because of public access television, he was able to continue teaching until the day he died. When I heard this story it made me feel very, very proud to be involved in public access television.

Another important aspect of public access television is that it brings local government meetings and other civic events to people who might not ordinarily be able to attend them. One example would be an elderly shut-in person being able to watch their grandchild's high school graduation live on their city or town's public access station. The station that I run airs all the meetings of our town's Select Board (the town's governing body), the School Committee, the Planning Board, the Conservation Commission, the Municipal Buildings Committee as well as Annual and Special Town Meetings (the New England type). I established public access television in our town in 1990. After a few months the Select Board told me that having their meetings aired on our public access station was allowing them to communicate much more effectively with the townspeople than they had been able to previously. Losing this would be a terrible shame.

If you would like to get a better idea of what public access television provides to the public, go to <http://publicaccess.se/communitymedia/cat/linksus.htm>. There you will find links to the web sites of hundreds of public access stations located in the United States. Make sure that you look at their program schedules to see the wide variety of programming they offer. Everything from local church services to high school sports, informational programs with topics from beekeeping to "Your Red Cross in Action" to local history.

In conclusion, I very strongly urge you to please leave in Telecommunications Act the clause that requires cable TV companies to provide funding for public access television. Thank you for your time.

Sincerely,

Richard D. Trueswell

Station Manager

Hadley Public Access Television

www.hadleyma.org/tv5.shtml

From: DeeDee Halleck <[REDACTED]>
Sent: Friday, January 23, 2015 10:10 PM
To: CommActUpdate; Alliance-Members
Subject: Local Community Media is Crucial for Our Future

To the US Senate and House of Representatives:

I am emerita Professor of Communication at the University of California, San Diego currently living in New York. I have lectured and shown samples of public access programming from the many media centers throughout the United States to admiring audiences around the world: in Brazil, Korea, Nicaragua, Japan, Kenya, Switzerland, Germany, Austria, Netherlands, France and Turkey. The infrastructure that we have nurtured for many long years of struggle is alive and well. It is unique in the world. It gives hope and inspiration to those throughout the world who do not have voice. It serves as a model for what is possible in providing authentic local news and talent.

This special system of sharing telecommunications resources needs to be maintained and expanded. As the world braces for increasing eruptions due to climate change, only the local media access channels can truly provide information to their communities and resources to document this change as it occurs. There have been many instances where local coverage of disasters was only available on PEG (Public Educational Government) channels.

I have a house in Willow, New York, and the local access channel here is the only medium that is covering a crucial situation concerning our water and the threatened loss of a beautiful lake. Many producers are covering this local situation and posting their tapes, not on Youtube, but on our local channel 23, which transmits the town board meetings and the school board meetings and hundreds of hours each week neighbor to neighbor. This is not something the large news corporations will be interested in.

It has been inferred that with new media, social media, or whatever, we do not need community media channels. But we need media centers more than ever, to train, to edit, to transmit and work closely with the many individuals and groups who are locked out of main stream channels.

Please support the wide spread talent and passion that have created and sustained these important venues which have provided thousands of hours each week, far beyond the programming of commercial channels.

DeeDee Halleck

--

<http://www.deepdishwavesofchange.org>

[Redacted]

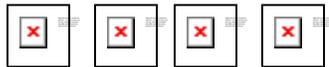
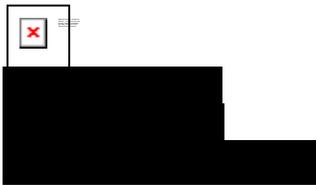
From: Young Han <[Redacted]>
Sent: Friday, January 23, 2015 3:15 PM
Subject: Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

This email is to Fred Upton and Greg Walden,

I'm writing you today to implore you to not take away PEG fee payments from cable companies to support public, educational, and governmental programming. It's imperative that we maintain an avenue and medium for the public and local communities access to broadcast, create, and share. Without the PEG funding, cable companies will not have a reason to support local access and we will see the down turn of so many local communities' ability to create and share.

Please email me or call if you'd like to chat in further detail. Thanks for your time and consideration.

Young Han
Professional Do Goodr



HCCAM TV

Hingham Community Access and Media

Studios at: 35 Pond Park Rd. #8, Hingham, MA 02043

Phone: (781) 836-5094

Mailing address: PO Box 117 Accord, MA 02018

www.HinghamMedia.org

Fax: (781) 875-1749

January 23rd, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Upton

I have recently learned that there has been an inquiry as to whether PEG channels are warranted in the era of the Internet? In my opinion the answer is an astounding YES! More warranted than ever!

In an age with an ever growing number of media outlets, yet a seemingly shrinking number of outfits actually owning these outlets, a viewer's ability to discern and place value on this media they are being bombarded with is an area of great importance. Local, independent, community media PEG centers and our programming therefore serves an extremely important role in providing education and media literacy. We are also one of the last remaining vestiges where an individual has economical access to this important information.

The services PEG centers provide are considered invaluable to the many organizations we serve. From promoting and covering their community event or causes, to providing the production equipment and services they need to help them accomplishing their goals, community PEG centers provide an economical outlet which many in our communities utilize quite frequently.

In addition to the media literacy we all teach in our centers, PEG centers are also the only segment of the media industry that focuses exclusively on local programming. Most large commercial regional media outfits only show up when there's a story that sells. This means they are missing a lot of important opportunities and content. Without PEG media centers how will today's busy family with two working parents stay informed on local politics and government issues which may have impacted right in their own backyard. On our PEG channels these individuals can and do routinely stay informed by watching meetings of the town's Board of Selectman, School Committee, Planning Board, Zoning Board of Appeals, and Community Preservation Committee. While we may sometimes see another team of media professionals at one of these meetings it is never for the entire meeting and only as long as it takes to catch a 30 second sound bite that can attract viewers to their next newscast. PEG centers keep this information flowing in an open and transparent way every single day.

Studios at: 35 Pond Park Rd. #8, Hingham, MA 02043

Mailing address: PO Box 117 Accord, MA 02018

INSPIRE-EMPOWER-SHARE
COMMUNITY

Phone: (781) 836-5094

Fax: (781) 875-1749

Lastly and perhaps most importantly PEG centers contribute to, and preserve the local culture of our communities by filming local events and topics considered highly valuable by those in our communities. The United States of America is a tapestry of unique individuals and communities, and there are very few platforms out there which actually contribute to this uniqueness which is truly an American treasure. Therefore I do not think the question should be "Are PEG channels warranted in the era of the Internet?" Rather it should be "How should policy modified in order to preserve and aide this valuable American asset in the era of the Internet?"

Thank you for your time and attention to this matter,



Eric Dresser
Executive Director
Hingham Community Access & Media

[REDACTED]

From: Sally Hebert [REDACTED]
Sent: Friday, January 23, 2015 3:15 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper # 6 in play promoting localism.

The Honorable Fred Upton and the Honorable Greg Walden

"Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?"

NATOA believes it is imperative that communities submit comments to the Committee to the effect that, YES, provisions requiring PEG access are still necessary and warranted today. Commenters should bolster this position by explaining the role that PEG programming plays in their community. As we have said before, it is essential that local communities "tell their story" and the role that PEG services .

Please consider that the cable television companies, internet providers for television, and satellite television provide space and encourage local access television in their communities they serve.

In 1988 cable television came to Greene, Maine; the town was asked if they would like a local access station. I questioned what it was and have been involved since going on the air in May 1989. We have just completed twenty-five years of broadcasting to the towns of Greene, Leeds, Turner and Wales in Maine. The Town of Greene is the only town that opted to receive franchise fees from the cable provider. This was back when there was very few stations in Maine approximately 14 to today of over 90 stations. The residents of Maine rely on these stations to provide them with local television. To provide the airing of Town Council meetings, Selectmen meetings live! This has been an asset to our town. The local corner store would have at least six different stories of what happened at the Selectmen's meeting. I felt that broadcasting the meeting itself the viewers would be getting the whole story of what has happened at the meetings. This has stopped a lot of false gossip going around the town. If we are not on the air residents question why?.

The State of Maine agencies have been producing videos to show on the towns local access television on law changes, safety etc..

Many, many hours are put into producing these programs. Very few of the stations in Maine are being run by paid staff or at the least a station manager. **Most of the stations are run by volunteers!!!!!!** These volunteers enjoy what they are doing they have a passion for their community to provide these programs to the residents.

I have had students that have volunteered for our little station here in Greene that are now working for the Broadcast stations. I feel that we had a part in developing their minds of going into television on a larger scale. Have small stations available – those will come – those will learn – those will benefit – they feel pride in their communities.

I have heard many people say if it was not for local access television I would not pay the expense of cable television. These local television stations are an asset to the cable companies.

These provisions are warranted in the era of the internet – not everyone has internet - many people struggle to pay their cable bill, but they still want to be informed on what is happening in their communities.

These stations provide, bulletin board service to their communities on what is happening, who to contact for assistance in food, insurance, health needs. Shut in's and elderly enjoy the programming, for some it is their only contact with the community.

When the railroad came into the United States to connect east to west it was believed it would not work or last – look at today Amtrak is traveling across this great land. When cable television came into communities people did not think that it would last, people have gotten used to the service (some viewers it is the only way they can get television in their homes) people did not want local access television. Look at Maine it went from 14 stations in 1989 to over 90 in 2015.

Again, please following my plea and keeping (PEG) local access television, funding for local access funding and consider that the communities can receive funding for broadcasting over the internet. These signals go over the same lines as local access television.

I can be reached at 207-946-5146 for any comments or questions about my plea.

Thank you for taking the time to read this.

Keep PEG alive!!!!!!1

Sally Ann Hebert
WGLT TV7 Greene Maine local access television Chairman
Community Television Association of Maine Chairman
ACM-NE Board Member

From: Tracie Heidt [REDACTED]
Sent: Friday, January 23, 2015 5:15 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Regulation of the Market for Video Content and Distribution--Response to White Paper #6

Dear Honorable Fred Upton and Honorable Greg Walden,

I strongly support our PEG access and programming in the city of Canby. Our local CTV 5 provides valuable services and coverage of local events, news, and special programs; their presence in our city is vital for our community outreach, communication, and unity.

I have been involved with CTV 5 for about a year. I worked with CTV 5 director Tony Gonzalez and his crew to film a documentary in order to show our local viewers the need we have for community volunteers in our public schools. It was called the "Teacher Adoption Program," and I interviewed current volunteers, teachers, administrators, and the superintendent to tell our story. Many viewers told me they felt inspired by the video and were impressed that such a professional product could come out of a small town station.

The video has received more than 570 views on You Tube over the past year, and it provided great exposure to community members who otherwise would not have heard of this important volunteer program. This level of outreach was possible only because our local access channel exists. You can view the video at https://www.youtube.com/watch?v=Hk_8wVpr9CA.

In addition, while canvassing the city as a candidate for Canby City Council, I met several people who were familiar with Canby politics and council meetings because they regularly tuned into CTV. I learned that there is an audience, and they are watching!

Tony and his crew are innovative and talented professionals, who are ever increasing their reach in the community by making new films of topical interest. They interview community members/ leaders about current or political events, attend special events to give coverage, film local cooking shows, broadcast high school sporting events, teach local students about video production, and invite people (i.e. "producers") with new ideas to come on in and use the studio--and create.

Our local access channel is only beginning to reach its full potential under the direction of Tony Gonzalez, and I urge you to recognize the value our station--as well as the many stations across the country--gives to our citizens.

Sincerely yours, Tracie Heidt, Canby City Councilor

PUBLIC RECORDS LAW DISCLOSURE

This email is a public record of the City of Canby and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

[REDACTED]

From: Denet Lewis [REDACTED]
Sent: Thursday, January 22, 2015 12:52 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Honorable Greg Walden and Honorable Fred Upton,

I am writing you to ask you to please support public access channels, PEG.

I am a resident in Mountain View California and I produce my own TV show called High Five Fitness at our local PEG station.

It has been such an amazing experience, I connect with volunteer members to the community to produce my show in a studio. I take great pride in how we can produce a show in a studio with correct lighting and audio. I am able to work in my community connecting with local fitness experts and bringing them onto my show where they can share their skills with our local communities. After the show I have people come up to me and tell me how the show has motivated them. It is such a wonderful resource to be able to connect with the community. The connections, friendships and relationships I have built could not be done on the internet only. In many ways the most meaningful part of my show occurs right after we shoot an Episode, I provide my volunteer crew (often 8 members) and the local fitness experts who are on my show with a dinner. The connections we build, the stories we share, the food we enjoy, the wonderful sense of belonging to the community are all made possible with the local public access channels.

Thank you so much for your support.

Regards

Denet Lewis
Producer
High Five Fitness TV



HOFFMAN ESTATES

OFFICE OF THE MAYOR

January 21, 2015

William D. McLeod
MAYOR

The Honorable Fred Upton
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
U.S. House of Representatives
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6 by the Village of Hoffman Estates, Illinois

Dear Representatives Upton & Walden:

The Village of Hoffman Estates is pleased to respond to the House Energy and Commerce Committee white paper number 6 on regulation of video content and distribution. We are happy to provide the following input in preparation for upcoming updates to the Federal Communication Act.

1. Broadcasters

- a. Yes, the public trustee model still makes sense for broadcasters in the current communications marketplace. Broadcasters are still using the public airwaves for profit. It is only right that they continue to serve the public interest. As more industry consolidation takes place there is a move to cover more wide-ranging events to the detriment of local events. Localism must continue to be encouraged to keep people informed of local educational, cultural, political and current affairs information. This cannot be done with a more national business model. It is important to keep fairly impartial information available to the viewer rather than allowing large corporations to be able to control the content of public media to fit whatever agenda they may have. YouTube is fine for entertaining video clips, but falls short on responsible news information.
- b. The public interest for: diverse programming, political discourse, localism, children's educational programming, access to persons with disabilities, and equal employment opportunity should remain. The small number of these programs that must be produced is a small price to pay for access to large numbers of viewers.
- c. Broadcasters seem to be moving into subscription video services pretty well on their own. The recent announcement by CBS of having their programming available on-line mirrors similar moves by Disney and HBO. It does not seem that broadcasting necessarily precludes offering subscription services and may, in fact, make it easier due to the availability of previously made content.

- d. Yes, local market rules are still necessary to protect localism. Local broadcasters are still in the best position to provide information on the local area in a timely manner. While local Public, Educational and Governmental access channels (PEG) may be able to provide much more narrowly focused informational programming they lack the speed of response and ubiquitous reach to the local viewer the broadcasters enjoy. PEG channels, while being important conduits for localism, are limited in resources and geographic reach.
2. Cable Services and the 1992 Cable Act.
- a. There only seem to have been two substantial changes in the market since the 1992 Cable Act. The first is the introduction of competition by satellite providers (Dish and Direct TV). These providers offer some competition to video content, but are limited in their ability to reach all those who might like to get their content. For example many multiple dwelling unit residents will not have the necessary line-of-sight (LOS) to be able to employ a satellite dish successfully. There are also many home owners who cannot get satellite signals due to the existence of mature trees or high-rise structures that block the needed LOS for satellite service. Cable still seems to have many more channels available with more reliable service than the satellite providers, as evidenced by the number of subscribers each provider has.

The other change is the rapid development of the Internet and related information availability. The popularity and increasing speed of Internet services are starting to spawn alternate providers of video programming, such as HULU and Netflix. As these growing alternate Multi-Channel Video Programming Distributors, and other emerging over-the-top video providers, begin to gain market share we may finally begin to see the competition for the video consumer that has been so sorely lacking.

The unwillingness of cable providers to compete with each other has been a tremendous disappointment across many areas of the country. The unspoken agreements of cable providers in the U.S. has greatly hindered the expansion of advanced high-speed networks that are taking place in the rest of the world. Comcast does not need to buy Time Warner to be able to move into those markets as a service provider it merely needs the will to go in and compete where it has agreed not to. To have a truly competitive telecom industry we need a high-speed telecom network that is open to all providers rather than the limited cable/telecom fiefdoms that we are saddled with today.

To really improve the telecommunications landscape, the Cable Act should be changed to open the systems to multiple providers. There should be enough bandwidth and switching capacity to the home today to allow consumers to choose between Comcast, Time Warner, Charter, et al, as well as multiple Internet Service Providers (ISPs) and telephone providers rather than being limited to one incumbent provider. Perhaps a last-mile broadband utility is needed to accomplish this.

In an effort to enhance competition the State of Illinois enacted a state-wide franchise (SWF) to allow for easy access to the rights-of-way. There has been very little additional competition in the nearly eight years since enacting the SWF in Illinois. AT&T, who helped craft the legislation, has gone into a limited number of areas to cherry pick where they think they might be able to gain the most profit rather than serving entire communities. In Hoffman Estates, which was one of the first communities in Illinois to get the U-Verse service, only about half our residents can get the service.

- b. Program, leased channel and PEG channel access is the least that should be required in the Internet age. As stated earlier, it would be better for everyone, except the incumbent provider, if fiber to the premise networks were built and opened up to all comers. That is the only way to get true competition. It is silly to require competitors to build complete networks in order to compete. Even AT&T relies on its existing twisted pair network to offer competitive service. A fiber optic utility should be put in place to allow complete access to all providers who care to use it. Telecom consumers have been paying higher costs for decades to pay for such networks and have yet to see much in the way of improved networks.

As it stands now, program access, leased access, and PEG is the only way for competitive program providers to get access to walled gardens that are the cable systems today. Increased industry consolidation reduces localism and increases the wealth and political power of incumbent telecom providers. State and federal laws have reduced the role of municipal oversight of cable operators resulting in increased consumer dissatisfaction with unresponsive cable behemoths. PEG access is becoming one of the last bastions of true localism as broadcasters look increasingly to national and world news. PEG is about the only avenue, other than YouTube, the common people and local governments have to mass media. It is a small price to pay to be able to put proprietary networks into the public rights-of-way for a near monopoly telecom network.

These cable controlled high-speed networks also allow the cable provider to control access to the Internet. These networks offer the highest speed Internet to consumers and the highest profit to the cable provider. Increasingly little of the network capacity is being devoted to video programing, which was its original purpose, and more and more devoted to Internet, telephony and other services (such as home security) for which it does not need to pay a franchise fee.

Franchise fees should be paid for all services provided over networks in the ROW. Instead cable providers offer less and less in return for use of the ROW. For example, PEG channels are forced to remain obsolete SDTV signals while all others have transitioned to HDTV. The cable company's rationale for this is that they do not have the bandwidth needed to provide HD PEG signals, even though they have reclaimed the 6 MHz PEG channels and put them on digital channels using a small fraction of the former bandwidth needed. If there is not enough bandwidth for HD PEG channels it is because that bandwidth has been allocated for increased high profit non-video services on which they do not pay franchise fees.

3. Satellite and cable services are totally different systems though they do compete in limited areas. Satellite does not require use of the public ROW, does not provide Internet, Telephone, or other IP enabled services (such as home security) and thus **should** be treated differently. Cable companies pay increasingly small franchise fees to use the ROW, as they expand into other services that do not contribute to the calculation of franchise fees, and Satellite providers pay for wireless bandwidth over which to send their signals, which is much more limited than the increasing bandwidth available on terrestrial systems. They provide limited local programming and provide limited local benefit. Cable is more local and provides access to local programming, such as PEG and their own locally produced sports channels. If you want to decrease the disparate treatment require satellite to provide PEG access, emergency alert information and pay local fees. Their installers and service personnel do use local streets and profit from the payments of our residents.

It is not surprising that Satellite providers are rolling out services via the Internet. It will be interesting to see how well it is adopted. It will also be interesting to see how the cable companies react to it being provided over their broadband networks. It could turn into another cable profit center as it did when Netflix "chose" to pay extra to alleviate bandwidth problems.

As cable companies consolidate and grow they become increasingly unresponsive to the needs of the local subscriber and community. Wait times to reach customer service representatives is increasing to ridiculous levels and the customer service received is getting concerned and responsive to the needs of the subscriber who really has limited alternatives to the services offered by cable providers. The cost to do business decreases for the provider while the cost to receive service increases for the consumer in an uncompetitive industry. Where is the public interest in that?

Sincerely,

A black rectangular redaction box covering the signature of William D. McLeod.

William D. McLeod
Mayor

WDM/ds

[REDACTED]

From: [REDACTED] on behalf of Carolyn Hopkins-Vasquez
Sent: Friday, January 23, 2015 5:49 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Attn:

The Honorable Greg Walden

2185 Rayburn House Office Building

Washington, DC 20515

Public access television has always been and continues to be an extremely important platform for communities across this country in order to get out information that the mainstream medium of commercial television does not cover.

It is a vital resource for information for the many Americans who still do not have Internet access, including a large number of low income families, individuals and seniors. Television is their primary source for obtaining information and news affecting their community.

KMVT is a great resource for Mountain View, acting as a resource for information about local elections and events, providing internships for local college students, hands-on education to children and teenagers, and so much more. KMVT is more than just a television station broadcasting programming; it is how our community connects to one another and how many learn important digital media skills useful for career advancement and personal growth.

The American television market was built on the idea of providing programming in the public's best interest, not what's best for commercial media conglomerates. KMVT and stations like it provide important resources that cannot be quantified by ratings or advertising dollars. Not having funding and access for these types of stations is the wrong move.

Please contact me with any questions.

Thank you,

Carolyn Hopkins-Vasquez
Director of Marketing
Tied House Brewing
Hermitage Brewing Company
[REDACTED]



[REDACTED]

From: Dawn Morgan [REDACTED]
Sent: Thursday, January 22, 2015 4:58 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Hello,

Hyattsville Community Television (HCTV) records, disseminates, and archives valuable information about our community, as directed by our city charter. We broadcast live weekly city council meetings, which are re-broadcast three times a day, seven days a week. Recently, the city council extended voting rights to 16-year-old citizens. More than ever, our community is one of engagement, and we at HCTV want to keep expanding the effort.

We also produce original videos, such as *Operation Santa With a Badge*, a short documentary about our city's annual holiday event where area businesses and the police department sponsor holiday shopping for children in need. In between programs, HCTV plays a loop of information about the city and upcoming events. And while we have an active online presence, HCTV remains the one local television station that caters specifically to the civic needs of our citizens.

HCTV has a role in making the political process transparent and accessible to the community. We are a window to the city, connecting residents, celebrating community, and contributing to the overall fabric of life in Hyattsville.

Jonathan Alexander
City of Hyattsville
Cable/Communications Coordinator

Dawn Morgan
HCTV Intern

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Thank you.