



## So What Does \$7.2 Billion Buy You in Broadband?

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# Lawmakers Issue Call for Protections for PEG Access

By Barbara Popovic

**P**ublic, education and governmental (PEG) access has emerged from 30 years of development at a watershed moment. Will the lessons learned from the past three decades form a foundation for public media in the future? Or will weakened legislation harm PEG access to the point of no return?

At a hearing held on September 17, 2008, members of a powerful House Subcommittee showed little patience with Commission rulings or industry actions that have undermined Congressional goals to foster localism and diversity through PEG access. The committee examined challenges to the survival of PEG and members showed their determination to protect this important community resource.

Chair of the U.S. House Appropriations Subcommittee on Financial Services and General Government, Jose E. Serrano (D-NY), said, "Congress recognized that PEG programming is in the public interest and essential to our communities as an outlet for free speech, local information and opinions, and emergency communications. PEG supports our democratic ideals by helping to develop a well-informed and well-educated society. It benefits all of us to support and encourage PEG programming."

Federal Communications Commission (FCC) Media Bureau

Chief Monica Shah Desai agreed: "Promoting localism and diversity are two fundamental goals underlying the Commission's media policies. PEG access promotes both. The Commission recognizes the importance of PEG access in fostering choices for local and diverse programming in communities."

But Chairman Serrano challenged the assumption that the FCC is adhering to those policies: "In adopting rules and guidance that reduce the ability of localities to impose specific franchising requirements, including PEG requirements, on potential new entrants, the FCC appears to have made the decision that, in this instance, the goal of reducing barriers to competitive entry outweighs the goal of fostering localism...While I appreciate all the arguments made in support of promoting competition as well as those made in support of promoting localism, in my opinion, localism must not be diminished in importance."

After welcoming witnesses from the FCC, PEG community, and cable industry, Chairman Serrano pointed

out the absence of AT&T. “I frankly find it incredible and disappointing that a company the size and stature of AT&T can’t find or won’t find a suitable witness for a hearing of this important public policy issue. AT&T’s recent actions relating to PEG channels go to the heart of many of the concerns that will be raised today. Let the record show that I consider their decision not to send a witness to be indicative of the company’s apparent disregard of the importance of PEG to local communities.”

Subcommittee member Mark Steven Kirk (R-IL) added, “...if there was any thought by AT&T the Republican member here at the hearing would help them out, let me disabuse them now...I am completely with you on nailing AT&T over what they are doing over public access. It does appear that AT&T is in direct violation of Illinois law. And so whether it is in Springfield or in Washington, we should fix this...”

### **Harmful FCC and state actions**

Barbara Popovic, executive director of Chicago Access Network Television testifying on behalf of Alliance for Community Media and Alliance for Communications Democracy, detailed the harm that has come to PEG<sup>1</sup> and noted that the FCC’s video franchise rulings, “...green light a major regulatory shift while failing to safeguard PEG, ignoring localism and diversity goals mandated by Congress.”

The telco push to enter the cable business while lowering the bar on public interest requirements of video providers resulted in regressive state laws that, Popovic says, “strip away local authority, weaken consumer protections, limit build-out, and undermine PEG access.”

AT&T’s sub par PEG product



### **The U.S. House Appropriations Subcommittee on Financial Services and General Government hold hearing on PEG Access.**

reflects the results of deregulation. Popovic cited the Congressional Research Service’s September 5th report on PEG access stating that AT&T “has chosen not to make PEG programming available to subscribers in the same fashion that it makes commercial programming available. Instead, it treats PEG content the same way it treats Internet traffic.”<sup>2</sup>

Popovic added, “AT&T consigns PEG channels to a format that is inferior to commercial channels in virtually every way that matters to a viewer,” treatment that is expressly prohibited in a number of states. At the same time, independent engineering research shows PEG channels can be treated equally on systems like AT&T’s with readily available technology.<sup>3</sup>

Rep. Adam Schiff (D-CA) asked what actions the FCC is taking to ensure PEG channels are accessible to all customers. Schiff said:

“California franchise regulations require new entrants to treat PEG channels the same as incumbent cable providers do. But there is a

concern that certain new providers are not meeting those requirements by offering PEG channels at lower quality resolutions, not offering closed captioning, not putting PEG channels on the scrolling TV guide, and making it difficult and time-consuming to access PEG channels. Since many believe there are inadequate enforcement mechanisms in the California statute, local cities interested in protecting PEG access for the citizens may have little recourse aside from civil action to ensure that PEG channels are accessible.”

Popovic noted the rapid dismantling of franchise commitments of incumbent cable operators where laws have been weakened, including studio closures in Michigan and Indiana. Rep. Peter J. Visclosky (D-IN) entered into the record a letter from Sheriff David Lain, an Indiana resident who for eight years produced a program highlighting public safety and local nonprofits until Comcast closed all of its Northern Indiana studios following passage of state law in 2007.

Howard Symons of the National Cable Television Association said that the withdrawal of support for PEG by cable operators was triggered by state legislation that removes certain PEG obligations for state franchise holders.

Michael Max Knobbe, executive director of Bronxnet in New York pointed to a recent trend among cable operators toward what he called, “channel slamming,” where cable companies consign PEG channels to remote channel locations and require the purchase or rental of additional equipment in order to view those channels.

Ms. Desai stated, “It has come to our attention that some programmers are moving PEG channels to a digital

<sup>1</sup> <http://www.cantv.org/ACM-PEG-survey.pdf> Alliance for Community Media study - Assessing the Damage: Survey Shows That State Video Franchise Laws Bring No Rate Relief While Harming Public Benefits

<sup>2</sup> <http://openers.cdt.org/document/RL34649>

<sup>3</sup> <http://www.ilnatoa.org/>, *Delivery of PEG Programming at Commercial Quality*. This study was prepared by CTC, an independent engineering firm with 25 years experience working with existing and emerging technologies to provide services in technology planning, communications network assessment and implementation, and project management. Illinois National Association of Telecommunications Officers and Advisors is a regional association of government telecommunications officers and communications experts.



**Congressman Jose Serrano (NY-D) chairs U.S. House Subcommittee hearing on PEG Access.**



**Rep. Mark Kirk (R-IL) at subcommittee hearing on PEG Access.**



**FCC Media Bureau Chief Monica Desai testifies at hearing on PEG Access.**

tier or are treating them as on-demand channels. We are concerned by these practices. We believe that placing PEG channels on any tier other than the basic service tier may be a violation of the statute. Subjecting consumers to additional burdens to watch their PEG channels defeats the purpose of the basic service tier. We believe it is important to ensure that consumers are able to get access equally to all channels belonging on the basic service tier, and that this should be the case regardless of what type of system the channels are being carried on.”

Rep. Kirk asked what the FCC’s plans are to make sure that AT&T is forced to bring PEG back to the basic tier and ensure PEG is “not exiled to On Demand?” Ms. Desai responded, “I would be anxious to place this issue in front of the commissioners for them to decide with our view that this would be a violation of the statute.” She noted the need for a formal filing in order to provide the FCC something to act on.

Rep. Schiff said, “I would think that if you have an oversight responsibility in this area and you see major companies who are not complying with the statute, that you have the authority on your own to take action to communicate with the companies that this does not meet the requirements of the statute.”

Calling for the subcommittee to take action, Chairman Serrano said, “...the issues that have been discussed here will be placed by this committee officially, in a formal fashion, before the FCC to make sure that we begin to look at the whole issue and how best we can stick to the intent of the law...” Ms. Desai responded that the FCC would respond to the subcommittee “posthaste.”

The FCC can take steps in 2009 to assure that PEG channels are readily accessible to the public, and to reverse harmful rulings that prevent PEG services from reaching the widest possible diversity of people. As Bronxnet’s Knobbe said, “The training, services, local content, and media access that PEG provides are needed now, more than ever, as communities across the nation are being left behind in a rapidly changing media environment...digital functionality, interactivity, video on demand, and high definition are ideally suited for 21st century PEG access services, while fulfilling the needs of communities in a digital age.”

### **Lawmakers Seek FCC Action on PEG**

On September 30, 2008, Chairman Serrano, Ranking Member Ralph Regula, Appropriations Committee Chair, David R. Obey (D-MI), and

Subcommittee members Kirk, Kilpatrick, Visclosky, Hinchey and Schiff sent a letter to FCC Chairman Kevin Martin. The letter summarized concerns expressed at the September 17 hearing regarding the location of PEG channels on cable systems, and accessibility, quality and functionality of PEG channels on AT&T’s U-verse cable service. In addition, it referenced “the degradation of public safety communications on AT&T’s U-verse service.” The letter stated, “We ask the Commission to assess these concerns to determine whether the situations described are contrary to federal laws and regulations and, if so, take expeditious enforcement actions.”

At the time of publication, no action had been taken by the FCC in response to the Committee’s letter.

### **Michigan Cities File Petitions for Declaratory Ruling**

In December, 2008, four Michigan municipalities — Meridian Township, Dearborn, Bloomfield Township and Warren — filed a petition with the FCC asking it to answer seven questions referred to the FCC by the United States District Court for the Eastern District of Michigan, where Comcast and the communities had been fighting for almost a year. In the petition, the communities asked the FCC to declare that the PEG channel

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**Michael Max Knobbe**, executive director of Bronxnet

slamming planned by Comcast violates the Cable Act and FCC regulations. In January 2009, the City of Lansing, Michigan filed a Petition for Declaratory Ruling challenging AT&T's discriminatory treatment of PEG Access as compared with commercial channels.

#### **PEG Advocates File Petition for Declaratory Ruling**

In January, 2009, a nationwide coalition of community media groups, municipalities and regional organizations filed a Petition for Declaratory Ruling with the FCC asking it to rule that AT&T's method of delivering PEG access over its U-Verse system is contrary to the Communications Act of 1934, as amended, and applicable commission rules. Petitioners include Alliance for Community Media, Alliance for Communications Democracy, Sacramento Metropolitan Cable Television Commission, Foothill-De Anza Community College District, CA, Chicago Access Network Television, Illinois NATOA, Manhattan

Neighborhood Network, Bronxnet, Brooklyn Community Access Television, City of Raleigh, ACM Western, Central States, Midwest, and Northwest Regions and SEATOA.

#### **FCC Issues Public Notice**

On February 6, 2009, the FCC issued a Public Notice seeking comment on the above mentioned petitions regarding PEG Access: (1) the Alliance for Community Media (“ACM”) et al petition challenging AT&T's PEG product; (2) the City of Lansing, Michigan's petition challenging AT&T's PEG product; and (3) the City of Dearborn, Michigan et al petition referring questions from the court in the Michigan Comcast PEG channel-slammings case. Comments are due March 9, 2009, & replies are due March 24, 2009. ■

*Complete coverage of the September 17, 2008 hearing is available at <http://blip.tv/file/1317154>  
Hearing clips and testimony are available at <http://ourchannels.org/>*

*Barbara Popovic is Executive Director of Chicago Access Network Television (CAN TV). CAN TV gives every Chicagoan a voice on cable television by providing training, facilities, equipment and channel time for Chicago residents and nonprofit groups. Ms. Popovic advocates for public, educational and governmental (PEG) access through Alliance for Communications Democracy (ACD), an organization that participates in court cases involving constitutional questions about PEG access and Alliance for Community Media (ACM), the membership organization of PEG centers. She was instrumental in securing protections in Illinois for PEG funding and channels in what is now widely seen as the strongest state video franchise law for PEG. CAN TV spearheaded the Keep Us Connected (KUC) movement for the preservation of localism and diversity through PEG Access.*