



American Community Television’s Response to the NCTA’s “Talking Points” on the CAP Act

The National Cable and Telecommunications Association (“NCTA”) has issued its “talking points” saying the CAP Act (HR 3745) is “bad for consumers, video competition and local municipalities.” American Community Television responds to NCTA’s claims as follows:

CLAIM ONE, FALSE: NCTA claims “cable operators have supported community oriented programming for over 30 years.” Nothing could be further from the truth. Public, Educational and Government (PEG) access television exists because of hard fought provisions in local cable franchising. Communities negotiated for PEG channels in exchange for cable operators using public rights of way. And while at one time, cable operators were forced by contract to construct studios and facilities and provide training and equipment, we have seen cable operators walk away from these earlier obligations once statewide or state issued franchising laws took effect. Time Warner abandoned 14 access studios in Los Angeles alone, access studios that had been in operation for over 30 years. Comcast gave communities in Indiana, Illinois and Ohio thirty days notice and then summarily shut down studios in dozens of small communities. These recent action cannot be viewed as “support” for PEG.

As for the claim that schools and libraries received free access to PEG channels, in those states where franchising went to the state level we are seeing schools being charged outrageous amounts in order to continue to receive the channels. For instance, in St. Louis County, it will cost the school over \$1 million to buy converter boxes to continue to get the channels and in Ft. Wayne, Indiana, over 800 schools will have to pay for converter boxes which they cannot afford to do.

CLAIM TWO, FALSE: NCTA claims “imposing additional PEG obligations on cable operators alone would exacerbate the competitive disparity cable already faces.” The stark difference between cable and satellite is that cable companies use our public rights of way. They dig in our streets, our sidewalks, our yards to deliver their product, satellite does not. It is the Cable Act that requires the franchising authority to consider the community needs as part of the renewal process. This is where PEG needs are determined as part of the agreement for the continued used of the rights-of-way. Additionally, satellite companies are required to provide 4% of their capacity to noncommercial programming. If cable operators really want competitive neutrality, they should provide 4% of their channel capacity to municipalities.

The CAP Act does not propose to impose additional PEG obligations on cable operators, it proposes to turn back the clock to a time before cable operators spent hundreds of millions of dollars lobbying to get harmful statewide franchising and anti-PEG legislation passed in 20 states.

CLAIM THREE, FALSE: NCTA claims “the bill would lead to higher cable rates.” In places where PEG support funding has been eliminated, cable rates have not gone down...they’ve gone up! A year after Kansas eliminated PEG funding, basic cable rates jumped from \$14 a month to \$22 a month! Time Warner announced an increase in cable rates between \$3 to \$6 dollars per month and there are several states where Time Warner no longer has any PEG obligation. Let’s not forget that gaining access to the rights-of-way allows the cable operators to market video, voice and data services. The most recent 10K for Comcast identifies that on a per video customer basis, the average approximately \$118 per customer per month. The video portion was \$68. The franchise fee paid would therefore be \$3.40. Comcast only pays and passes through to customers the \$3.40 in order to generate \$118 of monthly revenue. Franchise fees and PEG fees are a very small portion of the costs to cable operators in order to generate significant revenues.

Cable operators in states where there is no statewide or state issued franchising, or in states where local franchising still exists, in many instances already pay PEG support fees. Those PEG support fees can only be used for capital expenses. The CAP Act does not propose to increase these fees, it only proposes to remove the arbitrary restriction that limits these PEG support fees to capital and allow these fees to also be used for operating. It doesn’t make sense that in Houston, Texas the access channel collects over \$1 million per year in PEG support fees but can only use those fees for cameras and equipment. It doesn’t make sense that Fresno, California collects over \$650,000 per year in PEG support fees and that money just sits in the bank because Fresno does not have operational money and can’t hire people to run the access channel. Removing this restriction on the use of money will not increase cable rates.

CLAIM FOUR, FALSE: NCTA claims “the bill would override state franchising statutes and deprive franchising authorities of flexibility in the enforcement of PEG requirements.” In most instances, state franchising statutes promoted by AT&T and the cable industry sought to completely eliminate PEG access. [Add examples of where statewide franchising has cut PEG]This flies in the face of the spirit and the letter of the Cable Acts of 1984 and 1992, which codified the importance of PEG access television. The CAP Act seeks to restore what has been severely damaged by industry effort. The CAP Act includes AT&T and Verizon by referencing the cable operator or its predecessor, i.e. the incumbent.

The National League of Cities, the U.S. Conference of Mayors, the National Association of Counties and the National Association of Telecommunications Officers and Advisors, support the CAP Act. These bodies are the historical and existing franchising authorities. They do not

consider PEG channels to be unnecessary, to the contrary, they are working to pass the CAP Act because they consider PEG channels to be a valuable and important vehicle for disseminating community information.

CLAIM FIVE, FALSE: NCTA claims that “prohibiting PEG channels from being carried in digital format may actually reduce the amount of PEG programming available.” The CAP Act does not prevent PEG channels from being carried in digital format, it only requires that PEG channels be equivalent in quality, accessibility, functionality and placement to local commercial channels. Soon, all channels will be digital, however in the meantime, PEG channels must be made available to every subscriber, not relegated to a digital Siberia where subscribers can’t access them without paying the cable operator for equipment they do not want.

CLAIM SIX, FALSE: NCTA claims “requiring PEG channels to be equivalent to commercial channels would have unintended and potentially harmful consequences.” The harm being done is not to cable operators, but to PEG channels. Charter recently moved all PEG channels to the 900’s in St. Louis County and the City of St. Louis, which requires consumers to get additional equipment to receive them, costing consumers enormous amounts of time and money. The CAP Act guarantees that PEG channels remain on the basic tier of service whether that tier is analog or digital and protects consumers from having to get additional equipment or a new tier of service, just to be able to receive the PEG channels. For example, the AT&T U-verse approach does not retransmit closed captioning capabilities for PEG channels. Requiring the PEG channels to be of “commercial” quality would require AT&T to include the closed captioning.