

MARIN TELECOMMUNICATIONS AGENCY
555 Northgate Drive, Suite 230, San Rafael CA 94903-3680
PHONE: (415) 448-0355

MEMORANDUM

DATE: November 11, 2009
TO: MTA Board of Directors
FROM: Barbara Thornton, Executive Officer
SUBJECT: AGENDA ITEM **D-5**: APPROVE RESOLUTION FOR CAP

Recommended Action: Adopt the attached Resolution supporting the Community Access Preservation (CAP) Act of 2009 – H.R. 3745 in the U. S. Congress

Background: The MTA spent considerable energy during the Comcast CATV Franchise renewal process to obtain funding for PEG equipment, facilities and for ongoing operations. Only a small amount of the PEG funding the MTA received from Comcast can be used for any purpose, including PEG operations. Since our Franchise Agreement was approved, the State of California enacted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) which establishes Statewide Franchises which in our case provides 1% of gross revenues as PEG Fees to the local governing entity. The Act requires the Peg fee to be consistent with federal law. Existing federal law provides that the portion of the PEG fee used to pay for operational costs may be offset by the operator against the 5% franchise fee. This provision has the effect of limiting PEG fees to capital costs unless the local entity is willing to have its franchise fees reduced by the amount spent on operational costs. This has created serious funding issues for many PEG centers nationwide, including our own Community Media Center of Marin.

Congresswoman Tammy Baldwin (WI) introduced the Community Access Preservation (CAP) Act of 2009 (H.R. 3745) to address the challenges faced by the public, education and government (PEG) TV channels and community access television stations. This act addresses issues that the MTA has identified and addressed in California with the CPUC regarding DIVCA, however this particular California effort has not yet been successful in achieving necessary changes. Issues that MTA and other PEG entities in California raised for CPUC attention included using PEG fees for operations, and requiring PEG channels to be carried in the same manner as other commercial channels. In reality, the federal legislation (HR 3745) introduced by Congresswoman Baldwin would best address these issues.

The Community Access Preservation (CAP) Act would address the immediate issues facing PEG Channels by:

- Allowing PEG fees to be used for any PEG-related purposes;
- Requiring PEG channels to be carried in the same manner as local broadcast channels;

- Requiring the FCC to study the effect state video franchise laws have had on PEG channels, and requiring operators to provide the greater of the support required under state laws, or the support historically provided for PEG; and
- Making cable television-related laws and regulations applicable to all landline video providers.

A Summary of the Community Access Preservation (CAP) Act (HR 3745) is attached.

The MTA is currently receiving PEG fees from AT&T for their U-Verse Video product and these fees are passed on to the CMCM. The CMCM needs these fees to be available for operational costs rather than capital costs, which H.R. 3745 addresses. It is important for the MTA to support this legislation which in turn supports the CMCM and our constituents who benefit from the availability of PEG. In addition, AT&T U-Verse is currently building out throughout MTA's territory and the issue regarding the quality of AT&T U-Verse PEG channels is an issue H.R. 3745 will also address.

Following approval of the attached Resolution, the Executive Director will send it to Senators Boxer and Feinstein, and Congresswoman Woolsey and work with their staffs' regarding support and action on HR 3745.

**MARIN TELECOMMUNICATIONS AGENCY
RESOLUTION NO. 2009-____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN
TELECOMMUNICATIONS AGENCY SUPPORTING THE COMMUNITY ACCESS
PRESERVATION (CAP) ACT OF 2009 (H.R.3745)**

WHEREAS, the Marin Telecommunications Agency is a Joint Powers Authority comprised of the County of Marin and the cities/towns of Sausalito, Mill Valley, Tiburon, Belvedere, Corte Madera, Larkspur, Ross, San Anselmo, Fairfax and San Rafael; and

WHEREAS, the MTA's mission is to be the key policy-making and coordinating body related to telecommunications matters in Marin, focusing mainly on broadband, video and Public, Education and Government (PEG) access; and

WHEREAS, public, educational and government (PEG) channels play a significant role in the County of Marin and the cities/towns of Sausalito, Mill Valley, Tiburon, Belvedere, Corte Madera, Larkspur, Ross, San Anselmo, Fairfax and San Rafael; and

WHEREAS, PEG channels are a unique and valuable resource for local information and discourse for the residents; and

WHEREAS, PEG channels televise local government meetings, including city council, planning commission, county board and school board meetings, so that residents are informed about the actions taken by local elected officials; and

WHEREAS, PEG channels contribute to the democratic process by providing opportunities for candidates and others, such as the League of Women Voters, to discuss local issues during election campaigns and at other times as well; and

WHEREAS, PEG channels provide a window through which residents can view the diversity of cultures, recreational activities and artistic endeavors in their local community; and

WHEREAS, PEG channels reflect the unique identity of the communities they serve; and

WHEREAS, it is important to preserve PEG channels and funding for PEG channels, and to insure that the channels continue to be available to the entire community to serve the residents of Marin County and the cities/towns of Sausalito, Mill Valley, Tiburon, Belvedere, Corte Madera, Larkspur, Ross, San Anselmo, Fairfax and San Rafael; and

WHEREAS, HR 3745, the Community Access Preservation Act, addresses critical and immediate threats to PEG.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Marin Telecommunications Agency supports immediate passage of HR 3745; and

The Marin Telecommunications Agency on behalf of its member agencies, calls on our Congressional delegation, Senators Boxer and Feinstein, and Congresswoman Woolsey, to take all possible actions in support of the passage of HR 3745, including but not limited to endorsing, co-sponsoring and voting for HR 3745, and to work for its rapid passage.

Adopted this 11th day of November 2009.

Ayes:

Noes:

Absent:

Attested By:

Andrew Berman, Chair

Barbara Thornton, Executive Officer

Summary of the Community Access Preservation (CAP) Act (H.R. 3745)

Sponsor: Rep. Tammy Baldwin (D-WI)

Public, educational and government (“PEG”) channels permit schools, governments, individuals and groups to provide and receive information about local events, emergencies, and issues. The channels encourage creation of local programming by civic groups and non-profits, cover government and school meetings, and promote localism and civic engagement. The CAP Act responds to four immediate threats to PEG and these critical local communications.

1. **Unnecessary Limits on the Use of PEG funds.**

Issue: Under federal law, a cable operator and a local community may negotiate for support for PEG use in addition to the franchise fee payments for use of public rights of way. The FCC recently ruled, subject to some important exceptions, that this PEG support may only be used for facilities and equipment, and not for PEG operating expenses.

Effect: Some communities are closing PEG facilities because there are no funds to operate them.

Solution: The bill amends the Cable Act to ensure that PEG fees can be used for any PEG purpose.

2. **Discriminatory Treatment of PEG channels.**

Issue: The Cable Act provides that PEG channels should be free from cable operator interference and generally available to all cable subscribers. Accordingly, operators historically have provided local commercial television signals and PEG in the same manner, to all subscribers, and without additional charges. Some operators are now providing PEG channels that are less accessible, lower quality, missing basic functionality and more costly. Three complaints about mistreatment of PEG are before the FCC, but PEG is suffering in the meantime.

Effect: PEG is less accessible to all subscribers, and the most vulnerable viewers may lose access to basic local information altogether.

Solution: The bill reaffirms that operators must deliver PEG channels to subscribers without additional charges, and via channels whose quality, accessibility, functionality, and placement is equivalent to local commercial television stations.

3. **Preservation of PEG Support and Localism.**

Issue: Federal law envisioned that PEG requirements would be established on a community-by-community basis. Several States, while intending to preserve PEG, adopted statewide video franchising standards without regard to local needs and interests.

Effect: Statewide standards are resulting in widespread *elimination* of PEG.

Solution: To preserve PEG, immediate action is needed to permit Congress to review the impact of these changes on local programming. The FCC is directed to investigate and to report to Congress on the impact of State video service franchising laws since 2005 on PEG. To ensure PEG is preserved, each cable operator must provide the channels and critical facilities it had been providing historically. Operators must make ongoing PEG support payments equal to the greater of the cash payment required under State law, or the value of the PEG support it historically provided.

4. **Definition of Cable System.**

Issue: Entities that provide video services via wired facilities in the rights of way are intended to be subject to Cable Act rules, regardless of the transmission protocol used to deliver service, but some claim that the law is unclear, creating doubt as to where the rules apply.

Solution: The Act is amended to ensure it is technologically neutral. Providers using wired facilities in the rights of way are treated similarly and are subject to similar PEG requirements.

Press Releases: *October 8, 2009*

Baldwin Advocates for Community Access TV
Public, Educational, Governmental Channels Need Support

Congresswoman Tammy Baldwin has introduced the Community Access Preservation (CAP) Act of 2009 (H.R. 3745) to address the challenges faced by public, educational, and governmental (PEG) TV channels and community access television stations.

Historically, the funding for and broadcast of PEG channels have been negotiated as part of local franchise agreements between cable companies and local franchise authorities. However, twenty-three states have enacted new telecommunication laws that establish state-level franchise authorities. As a result of these recent state-wide agreements and a lack of adequate federal protection, some PEG channels now face significant broadcast and funding obstacles.

"Local access channels bring unique voices, perspectives, and programming to television," said Congresswoman Baldwin. "The nature of television programming is changing, as are the methods in which that programming is delivered. These changes should not come at the expense of the diversity and vibrancy of local voices," Baldwin said.

PEG channels connect residents with their local government in much the same way C-SPAN connects people to activities in Congress. Local school districts operate channels to feature school board meetings and forums, interviews, lectures, and sporting events not otherwise broadcast on television. Additionally, communities adopt various genres of PEG programming to reflect local interests. According to a survey conducted by National Association of Telecommunications Officers and Advisors, religious shows represent 20-40% of local access programming.

PEG stations and channels are locally funded, produced, and viewed and current federal law and a number of state laws are silent as to the basic requirements for PEG broadcasts or do not require dedicated funding beyond an "adequate assurance of financial support." Some franchised cable operators carry PEG channels differently than commercial channels, broadcasting them in reduced resolution, displaying them in menu-format, or simply moving them to a digital-only tier where they are inaccessible to analog cable customers. In some cases, customers must now pay extra fees in order to receive PEG channels. In other cases, operators are refusing to pass through PEG closed captioning unless a special request is made. This treatment undervalues PEG channels and their viewers.

The Community Access Preservation (CAP) Act would address the immediate issues facing PEG channels by:

- Allowing PEG fees to be used for any PEG-related purposes;
- Requiring PEG channels to be carried in the same manner as local broadcast channels;
- Requiring the FCC to study the effect state video franchise laws have had on PEG channels, and requiring operators to provide the greater of the support required under state laws, or the support historically provided for PEG; and
- Making cable television-related laws and regulations applicable to all landline video providers.

"Decisions at the state and federal level have combined to create a crisis for PEG. With the CAP Act, Rep. Baldwin effectively addresses the most immediate problems and opens the door to the future by preserving support for PEG while the FCC conducts its study. This bill is critical to us. Wisconsin's rich community access heritage is on the line," said Mary Cardona, Executive Director of the Wisconsin Association of PEG Channels.

"Community Media has a four decade history of connecting communities with their governments, schools, churches, friends and neighbors. The future existence of community media is being threatened against the intent of Congress for localism and diversity of voices in media. With the CAP Act, Rep. Baldwin addresses immediate needs to preserve and protect the important role PEG channels play in advancing democratic ideals through community uses of media," said Matt Schuster, Chair, Alliance for Community Media.

The Community Access Preservation (CAP) Act does not assume a "one size fits all" PEG structure, instead leaving the decision to negotiate for PEG channels to franchising authorities and the local communities they represent.

Baldwin's legislation is supported by the Alliance for Community Media (ACM) and the National Association of Telecommunication Officers and Advisors (NATOA).