



Keep Us Connected

Alliance for Community Media

H.R. 3745: The Community Access Preservation Act

Rep. Tammy Baldwin (WI) has introduced H.R. 3745, the Community Access Preservation Act. The legislation, if adopted, would restore PEG funding eliminated by some state laws, allow PEG funding to be used for operating expenses, prevent operators from discriminating against PEG channels, and make it clear that any entity that provides video services via facilities in the rights of way is subject to the Cable Act's franchising requirements.

What follows is a short briefing paper on the Act, which we hope you will use to educate your congressional delegation and seek their co-sponsorship of the bill. As of today, there are 17 cosponsors. The language of the bill is posted on www.alliancecm.com

Summary of the Community Access Preservation Act

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 the Cable Act, a cable operator and a local community may negotiate for PEG support 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 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 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 higher priced. 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: Immediate action is needed to preserve PEG 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.

What to watch out for

The Baldwin bill is not intended to address all the issues challenging PEG in a new digital environment. It is intended to address problems that are driving many PEG channels out of existence, and practices that threaten the accessibility and viewability of PEG channels. The summary of the bill explains that the legislation does not change the law, but it does protect PEG by clarifying the Cable Act, and (should it pass) will put an end to some of the most immediate problems facing PEG.

Despite the introduction of the Baldwin bill, it is still important that local governments protect their interests in PEG by continuing to pursue actions in the courts and at the FCC. No PEG bill will pass without strong support from local governments.

About the Alliance for Community Media

The Alliance for Community Media is the national nonprofit membership organization representing the interests of over 3000 Public, Educational, and Governmental (PEG) access organizations. For more information, contact Managing Director Greg EplerWood at 202-393-2650 or greg@alliancecm.org, or visit www.alliancecm.org.